MASTER
NEGATIVE
NO. 94-82140-9

COPYRIGHT STATEMENT

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted materials including foreign works under certain conditions. In addition, the United States extends protection to foreign works by means of various international conventions, bilateral agreements, and proclamations.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

The Columbia University Libraries reserve the right to refuse to accept a copying order if, in its judgement, fulfillment of the order would involve violation of the copyright law.

Author:
U.S. Interstate Commerce Commission
Title:
Before the Interstate Commerce Commission...
Place:
[n.p.]
Date:
1943

94-82140-9
MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DIVISION

BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD

Business
D530.7
Un34847 U. S. Interstate Commerce Commission.
Before the Interstate Commerce Commission. Docket no. 28300. Class rate investigation, 1939. Docket no. 28310. Consolidated freight classification. Brief for State of New York, State of New Jersey, Commonwealth of Pennsylvania, State of Maryland and for various chambers of commerce and commercial organizations in eastern trunk line territory. 1943.
cover-title, viii, 175 p.

Signed: Nathaniel L. Goldstein [and others]

RESTRICTIONS ON USE:

TECHNICAL MICROFORM DATA

FILM SIZE: 35mm REDUCTION RATIO: 12:1 IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 6/23/94 INITIALS: W.W

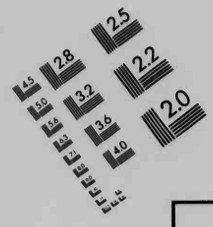
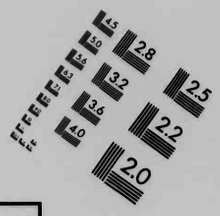
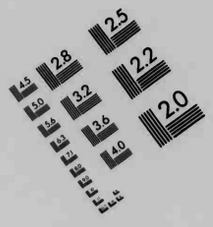
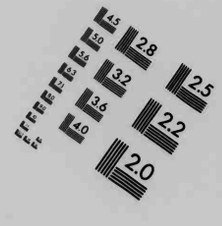
TRACKING # : MSH 01798

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

2.0 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz1234567890

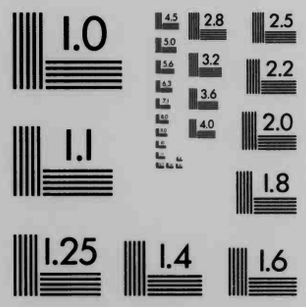
1.5 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz1234567890

PM-MGP 13"x18"
METRIC GENERAL PURPOSE TARGET
PHOTOGRAPHIC

150 mm

100 mm



ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz1234567890

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
1234567890

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
1234567890

1.0 mm

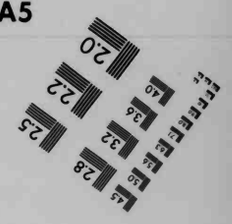
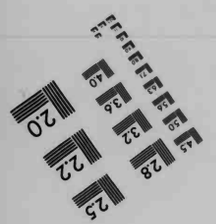
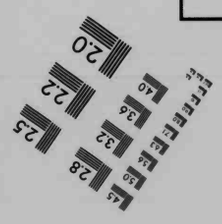
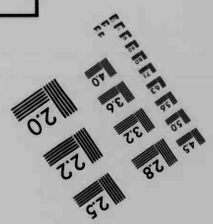
1.5 mm

2.0 mm

2.5 mm

A5

A4

PRECISION℠ RESOLUTION TARGETS

Century

A&P

1303 Geneva Avenue
St. Paul, MN 55119

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
1234567890

4.5 mm

ABCDEFGHIJKLMNOPQRSTUVWXYZ

U.S. Interstate Commerce Commission

Before the I.C.C., docket nos.
28300 and 28310.

Columbia University
in the City of New York

THE LIBRARIES

Graduate
SCHOOL OF BUSINESS
Library

Return to:
Parker McCollester
25 Broadway, N.Y.C.

BEFORE THE

U.S. Interstate Commerce Commission

Docket No. 28300

CLASS RATE INVESTIGATION, 1939

Docket No. 28310

CONSOLIDATED FREIGHT CLASSIFICATION

BRIEF FOR

STATE OF NEW YORK
STATE OF NEW JERSEY
COMMONWEALTH OF PENNSYLVANIA
STATE OF MARYLAND

and for

VARIOUS CHAMBERS OF COMMERCE
AND COMMERCIAL ORGANIZATIONS
IN EASTERN TRUNK LINE TERRITORY

Due Date: August 12, 1943.

Business
D530.7
Un34847

BB
AUG 19 1954

TABLE OF CONTENTS

PAGE

INTRODUCTION 1

Nature and Scope of the Proceeding 1

The Background of the Proceeding and the Political Atmosphere which Surrounds it 3

The Commission may require a change in rates only if the preponderance of evidence shows that the present rates are unlawful. It must not act as a traffic manager for the carriers 7

Concerning the Attitude of the Trunk Line States and Commercial Organizations 9

ARGUMENT AND DISCUSSION OF THE EVIDENCE 11

PART ONE (Docket 28300) ARE THE PRESENT DIFFERENCES IN CLASS RATE LEVELS UNLAWFUL? SHOULD THE COMMISSION REQUIRE A UNIFORM BASIS OF CLASS RATES 11

The Rates and Traffic Involved 11

As to the Scope of this Part of this Brief 16

Summary of Contentions of the States and Commercial Organizations of Eastern Trunk Line Territory Regarding Class Rate Levels 17

POINT I. The territorial basis of making rates, which inevitably carries with it the likelihood of differing rate levels, is not presumptively unlawful or obsolete, nor is it an artificial tariff wall. On the contrary, there are both historical and present reasons for its existence 23

PAGE

POINT II. Even if the record showed that a change in the class rate structure is necessary to make possible and stimulate the industrial development of the South and Southwest, the Commission is without power to require a revision of the class rates for such a purpose 29

POINT III. The economic theories advanced in support of the demand for a general revision of the class rate structure for the purpose of stimulating the location of manufacturing plants in the South rather than in the North rest upon the assumption, which is incorrect, that the differences in class rate levels were the cause of the earlier and greater industrial development of the North and invoke a theory of rate making which is unsound 37

POINT IV. The evidence requires a finding that the industrial development of the South has not been restricted by the class rate structure—nor by anything else 44

A. Not only has there been no prevention of the industrial growth of the South, but on the contrary in recent years the South has had a greater industrial growth than the North 45

B. The testimony of southern witnesses fails to disclose any important interference caused by the difference between the class rate levels with the growth of their industries or the sales of their goods 50

C. The testimony of important southern shippers who oppose the rate revision sought by the Southern Governors ef-

PAGE

fectively negatives the claim that the present rate structure is detrimental to the South 56

D. The record absolutely disproves any claim that goods of southern manufacture are prevented by the existing freight rates from being sold in northern markets 58

E. The claim that the class rate structure and the difference in the class rate levels between the South and official territory have prevented the industrial growth of the South and have favored and stimulated the growth of industry in the North is disproved by the movement of manufacturing industries from the North to the South 62

POINT V. The economic theories advanced in support of the demand for a revision of the class rate structure are invalid in other respects 64

POINT VI. If the Commission could prescribe rates for the purpose of influencing the location of manufacturing industries, it should not ignore the disastrous effect of a shift in industry from the North to the South upon the communities and population of the North 82

POINT VII. The rate evidence does not prove that differences in class rate levels are unlawful 85

POINT VIII. The record does not justify a finding that the costs of transporting class rate traffic are as high in official territory as in the other territories. Dr. Edwards' cost computations do not constitute proof of such a fact, which is negatived by other statistical evidence 86

PAGE

A. The results of the computations are averages for all freight over all lines of all railroads in each group. They do not purport to and cannot represent the costs of transporting any particular category of freight, such as class rate traffic, or of transporting freight between any particular points, over any particular lines or within any definite areas 87

B. The computations are based upon groupings of railroads which render the averages irrelevant and distort the results to such an extent that they have no probative value here 92

1. The exclusion of the Pocahontas lines from official territory is unjustified 92

2. In other respects Dr. Edwards' groupings are geographically incorrect for the purposes of this proceeding, and the average figures which he computes for the South are distorted and reduced by the inclusion of results of transportation within official territory 96

3. The exclusion of the Pocahontas lines from the northern group, the inclusion of the few coal-carrying roads of the South with the southern group, and the inclusion of several "bridge" lines with the southern group are entirely inconsistent and produce results which are distorted and of no probative value for the purposes of this proceeding 99

C. Further comments on Dr. Edwards' computations and the weight to be given to them in this proceeding 108

PAGE

POINT IX. Even if the "cost" computations would support a finding that the average costs of transporting all traffic, or indeed, of transporting class rate traffic itself were the same in the several territories, this would not justify a conclusion that the existing differences in the class rate levels are unlawful 117

A. Dr. Edwards' computations, if taken at face value, show only the average revenues which all freight moving for given distances, in certain types of cars and with certain net loadings must produce in order, on the average, to defray the carriers' costs. They ignore values, differences in the theories of the rate structures, competition, the relative volumes of different kinds of freight, and other factors which are important in rate making 117

B. The great differences in the influencing factors, theories and patterns of the rate structures in the several territories prevent any conclusion being drawn from the fact that computed average "cost" figures are the same, that therefore the rates on a particular portion of the total traffic in each territory are unlawful if not on the same level 123

C. The evidentiary value of computed average costs as a measure of the proper relationship between the levels of the class rates in the several territories is further diminished by the great differences in the character of traffic in the several territories 134

PAGE

POINT X. The record contains no evidence which would support a minimum rate order requiring that uniformity of class rates be accomplished by increasing the level of the class rates in official territory 142

POINT XI. So long as there are differences in the levels of the class rates within the several territories, the existing interterritorial class rates cannot be found unlawful. The destination rate theory has no justification .. 145

POINT XII. The record in the present proceeding being based largely on statistics for the year 1939, will not support an order requiring a change in rates for the future 149

POINT XIII. Miscellaneous Matters 151

A. Western Trunk Line Rates 151

B. The Jensen proposal for a division of official territory 153

Conclusions as to Part One 154

PART TWO (Docket 28310) SHOULD THE COMMISSION PRESCRIBE A UNIFORM CLASSIFICATION? 155

Statement 155

POINT I. The record here does not justify an order prescribing a uniform classification 156

POINT II. Some simplification of the classification is possible without actually changing relationships or the substance of the ratings 170

Conclusions as to Part Two 171

Cases Cited.

PAGES

Anchor Coal Co. v. United States, 25 F. (2d) 462 31
Atchison etc. Ry. Co. v. United States, 284 U. S. 248 149
Atlantic Coast Line R. Co. v. Arcade & A. R. Corp., 194 I. C. C. 729 114

Commonwealth of Kentucky, et al. v. Ahnapee & Western Ry. Co., et al., 213 I. C. C. 297 146
Consolidated Classification Case, 54 I. C. C. 1 158
Coxe Bros. & Co. v. L. V. R.R. Co., 4 I. C. C. 535, 3 I. C. R. 460 162

Divisions of Rates, Official and Southern Territories, 234 I. C. C. 175 114

East Tennessee Border Traffic Association v. Akron, Canton & Youngstown Ry. Co., et al., 214 I. C. C. 316 146
Eastern Class-Rate Investigation, 164 I. C. C. 314 15, 22, 24, 89, 124, 127, 154

Harvard Co. v. Pennsylvania Co., 4 I. C. C. 212, 3 I. C. R. 257 162
Hires Condensed Milk Co. v. Pa. R. R. Co., et al., 38 I. C. C. 441 164

Interstate Commerce Commission v. Chicago G. W. Ry., 209 U. S. 108 33
I. C. C. v. Diffenbaugh, 222 U. S. 42 31
Iron and Steel Articles, 155 I. C. C. 517 138
Iron and Steel Articles from the South, 176 I. C. C. 345 34

Lumber from Pacific Coast to Eastern Points, 210 I. C. C. 317 35

McCrory Stores Corp. v. Director General et al., 55 I. C. C. 423 164
Myer v. C. C. C. & St. L. Ry. Co., 9 I. C. C. 78 163

National Hay Ass'n. v. L. S. & M. S. Ry. Co., 9 I. C. C. 264 163

PAGES

North Carolina Corporation Commission v. Akron, Canton & Youngstown Ry. Co. et al., 213 I. C. C. 259 146

Page v. Delaware L. & W. R. Co., 6 I. C. C. 548 162
Procter & Gamble Co. v. C., H. & D. Ry. Co., 9 I. C. C. 440 163
Pyle & Sons v. E. T. V. & G. Ry. Co., 1 I. C. C. 465 161

So. Pacific Co. v. Interstate Comm. Comm., 219 U. S. 433 31
Southern Class Rate Investigation, 100 I. C. C. 513; 109 I. C. C. 300 ..... 24, 125, 126
Southern Governors Case (State of Alabama v. New York Central R. Co., 235 I. C. C. 255) 3, 4, 17, 24, 128, 146, 147
State of Alabama v. New York Central R. Co., 235 I. C. C. 255 ..... 3, 4, 17, 24, 128, 146, 147
Stoves, Ranges, Boilers, and House-Heating Furnaces, 182 I. C. C. 59 32

United States v. Chicago, M., St. P. and P. R. Co., 294 U. S. 499 33
United States v. Illinois Central R.R. Co., 263 U. S. 515 33

Warner v. N. Y. C. & H. R.R. Co., 4 I. C. C. 32, 3 I. C. R. 74 161
Western Rate Advance Case, 35 I. C. C. 497 118
Western Trunk-Line Class Rate Cases, 164 I. C. C. 1 24
Wool Rates Investigation, 1923, 91 I. C. C. 235 164

Sharfman, The Interstate Commerce Commission, Vol. I., page 166 158
Sharfman, The Interstate Commerce Commission, Vol. III-B, page 658 32

BEFORE THE

Interstate Commerce Commission

Docket No. 28300

CLASS RATE INVESTIGATION, 1939

Docket No. 28310

CONSOLIDATED FREIGHT CLASSIFICATION

BRIEF FOR
STATE OF NEW YORK
STATE OF NEW JERSEY
COMMONWEALTH OF PENNSYLVANIA
STATE OF MARYLAND

and for

VARIOUS CHAMBERS OF COMMERCE AND COMMERCIAL ORGANIZATIONS IN EASTERN TRUNK LINE TERRITORY

Introduction

Nature and Scope of the Proceeding

This proceeding was instituted by the Commission's orders of July 29, 1939.

In Docket No. 28310 the principal question is whether there should be a revision of the several freight classifications in order to bring into being a single uniform

classification for application on all railroads throughout the United States.

The central issues in Docket No. 28300 arise from the fact that there are different schemes and levels of class rates in the several rate and classification territories and between the territories, the official classification territory level being the lowest. The issues are whether because of these differences in levels the class rate structure is unlawful and whether there should be substituted for it a uniform level of class rates throughout the country east of the Rocky Mountains. If these questions should be answered in the affirmative, the further question would be presented whether uniformity should be achieved by reducing the class rates in southern and western territories to the official territory level, or by raising the latter, or by a combination of both methods.

Although the investigations are ostensibly upon the Commission's own motion, it would be blindness to ignore the fact that especially as to the issues in Docket No. 28300 concerning the differences in class rate levels this is, in fact, a complaint proceeding. For it is well known that the request for the investigation came from the Governors of the Southern States and that the only opposition to the numerous and urgent suggestions that this war period is not a suitable time in which to carry on such an investigation and to consume the attention and efforts of the hundreds of people concerned has come from the spokesmen for the Southern States and their allies of the Southwest. This complaint aspect of the investigation is important because of its relation to the background of the proceeding and the

atmosphere in which the Commission is called upon to render its decision.

It is important to realize, however, that this is not a complaint of shippers generally in the South and Southwest against a rate structure with which they are dissatisfied or under which they find they cannot operate. One of the most striking features of the record is the small number and unimportance of the shippers who came forward to testify concerning any grievances which they claimed to suffer from the class rate structure. The record leaves no doubt that the Governors of the Southern States and their allies, the Governors of the Southwestern States and the Tennessee Valley Authority, in seizing upon the territorial freight rate structure as an effective topic with which to boom the South, do not speak for their states as a whole, and certainly not for the industries and shippers of their states. This is shown not only by the lack of substantial evidence of shippers who are complaining but also by the vigorous opposition interposed to their contentions by representatives of important southern industries, whose testimony will be referred to presently.

The Background of the Proceeding and the Political Atmosphere which Surrounds It

In opening his dissenting opinion in the so-called *Southern Governors Case, State of Alabama* v. *New York Central R. Co.,* 235 I. C. C. 255, at page 333, former Chairman Eastman said:

> "The Commission is called upon to decide this case, on the record, after it has in effect been decided, in advance and without regard to the record, by many men in public life, of high and low degree,

who have freely proclaimed their views on what they conceive to be the basic issues. Their thesis has been that the section of our country generally known as the South is our 'Economic Problem No. 1', because, among other things, it is low in industrial development, and that a major reason for this condition has been and is an unfair adjustment of freight rates which has favored the producers of the North and burdened those of the South. It has become a political issue. While, however, the South gave birth to the issue, public representatives of the West now cry out against like supposed oppression, and public representatives of the North or East, as it is variously called, have risen in defense of their section.

"Under such conditions, it is not easy to decide the case without being influenced by emotional reactions, one way or the other, which should play no part in the decision. It is all the more important, therefore, that we should make every effort to reach our conclusions with cold impartiality, for this Commission has an equal duty with respect to every part of the country, and nothing will speed its ruin more quickly than the disease of sectionalism."

The same remark is applicable to this proceeding but with greatly enhanced significance. For this investigation is the offspring of the *Southern Governors Case,* and in the interval which has elapsed since that decision the campaign of speeches, newspaper editorials, magazine articles and bills in Congress has been waged by certain Southern Governors with increased intensity.

Professors of economics of southern universities have written elaborate but largely fallacious treatises attributing to the freight rate structure all of the so-

called economic ills of the South. The Tennessee Valley Authority has used its position as a Federal agency to the same end. The Board of Investigation and Research has obtained funds from Congress to prolong its life upon the assurance that it would undertake an investigation of the territorial rate structure, notwithstanding the present investigation by this Commission, and has used these funds to produce for Congress a preliminary report signed by its Southern and Western members, from which its Northern member felt compelled to indicate vigorous dissent. A clever and biting article in a magazine of wide circulation suggests that the South will not support the Administration in the next presidential election if the Commission in this proceeding does not satisfy the South's demands for rate parity. Although Governor Cooper of Tennessee testified in this proceeding that "Of course I meant what I said in my statement that our course has been to appeal to this Commission for relief, and not to seek legislative relief" (R. 1486-87), nevertheless, according to an Associated Press report, a Southern spokesman recently stated that

> "the degree of support for the Democratic ticket would depend, among other things, on what kind of a decision was handed down on freight rate equality."

A Southern Senator has introduced a resolution calling on the Commission to transmit to the Senate for publication as a Senate document Dr. Edwards' cost computations without asking for any of the criticisms of these computations or even for Dr. Edwards' own testimony on cross examination, which clearly shows that his computations do not support the statements made in

the public press as to the bearing of computed average costs of transportation upon the territorial rate question. And finally there have been introduced in the Congress a number of bills emanating largely from Southern Congressmen which, in one form or another, without reference to the facts, would require the Commission to order a uniform class rate level throughout the United States. These bills must obviously be intended as a warning to the Commission that if, regardless of the evidence in this proceeding, it does not order nationwide parity of class rates Congress will be pressed to act independently of the evidence.

These are not circumstances which make it easy for the Commission to approach its decision in this proceeding with complete objectivity, and reach a determination solely as required by the evidence before it. And yet counsel for the Southern Governors professed indignation that the Governor of the State of New York had the courage and frankness to express regret at the political atmosphere which has thus been created and in which the Commission is supposed to act in accordance with the law and to render a decision and make an order only as required by the preponderance of the evidence (R. 4671, 4679).

Now, as never before, therefore, the Commission is challenged to live up to its long and worthy tradition of high integrity, of independence of judgment, and of deciding solely in accordance with the law and the evidence before it. We are confident that despite the difficult atmosphere it will meet this challenge.

The Commission may require a change in rates only if the preponderance of evidence shows that the present rates are unlawful. It must not act as a traffic manager for the carriers

In another respect this proceeding presents to the Commission an unusual challenge because of the temptation which it offers to violate the tradition which it has developed over fifty years, which is one of the foundation stones of our regulatory structure.

It is easy to say that the classification has become all too complicated and to feel that the railroads should have done something about it before or should have come forward in this proceeding with some scheme for unifying the three main classifications. It may be tempting to reason that since the railroads have not done this, the Commission should do it for them. There is also a temptation to the uninformed, which should not appeal to the Commission but of which it may be the victim, to conclude that just as we are one nation and have one flag we should likewise have one uniform level of rates. And this may lead to the demand that since the railroads have not achieved uniformity it must be because of some sinister purpose or inertia and therefore the Commission should do something about the matter itself.

Therefore, although it may seem presumptuous even to suggest the point, we cannot, in fairness to those whom we represent, refrain from recalling to the Commission that its task is not that of a traffic manager but rather of a regulatory and law-enforcing body. Consequently, however desirable the Commission's members may consider that a uniform classification or a uniform rate level would be, and however well equipped they

and the Commission may be to bring these about, nevertheless it is very clear that under the Act the duty of initiating rates and classifications is upon the carriers and the Commission may step in and order changes in rates which the carriers have established only if it finds them to be unlawful in violation of some section of the statute.

This point will be stated again a little later in this brief in considering what is really the nature of the southern contentions.

One reason why, even if it seems presumptuous, we cannot refrain from recalling this limitation of the Commission's authority, is the wording of the Commission's notice of January 9, 1940 relating to the scope of the proceeding. In this notice the Commission stated that its determination would require the consideration of many matters, including

> "(1) whether one rate level, or fewer and more closely related rate levels than now exist, are lawful and desirable in the territory embraced in No. 28300; and (2) whether the establishment throughout the country of a rail and water classification, and a motor classification, simplified and uniform or more nearly uniform when compared with the present consolidated freight classification, is lawful and practicable."

With all respect, however, we suggest that the issue is not whether some other classification or rate basis may be lawful. Quite possibly there may be several different classifications or class rate levels which would be lawful under the Act. There is a "zone of reasonableness." But if the Commission, without any finding that the existing classification and class rates are unlawful, should prescribe some new classification and basis of rates however lawful they may be, the Commission would be invading the functions of management. It is clear from Section 15 that it is only when, after full hearing upon a complaint or under an order of investigation, the Commission shall be of opinion that any rate or classification

> "is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions"

of the Act that the Commission is empowered to make an order prescribing what will be the just, reasonable and non-discriminatory rates or classification for the future and compel the carriers to "cease and desist" from charging and collecting their previous rates.

Concerning the Attitude of the Trunk Line States and Commercial Organizations

Anyone who opposes change in a changing world lays himself open to the charge of being reactionary or obstructionist. It has become the fashion to come forward with blueprints of reform. There are circumstances, however, in which it is really constructive to oppose a demand for change when the accomplishment of that change would destroy something of great value. Such is the situation here.

Accordingly, if we oppose an order here which would attempt to require a change in the classification or in the class rate structure or both and if we do not present to the Commission a pattern for revising them, it is not because we do not desire to be helpful to the Commission or because the North seeks to obstruct

progress in order to retain advantages to which it has no right. Quite the contrary. Far more important than the number of differing items in the classification or even than the relative levels of the class rates is the preservation of our long tried regulatory system and the avoidance of a perhaps natural trend toward bureaucratic methods.

We oppose the entry of an order prescribing a revised classification and the entry of an order directing the carriers to accomplish a radical change in the class rate structures because we believe it to be of the utmost importance that the Commission should not order such changes unless a preponderance of the evidence taken at public hearings shows the present classification and rates to be unlawful, and because we submit that the evidence here utterly fails to support findings that the existing classifications and the existing class rate structures are in violation of any of the provisions of the Act. It is certainly far more in the broad public interest to urge that the Commission should do nothing when the evidence before it fails to disclose unlawfulness in the present rate structure than it is to ask the Commission itself to violate the statute, to exceed the powers conferred upon it by Congress and to order a revision of the classification simply because it thinks that simplification would be desirable, or to order a revision of the class rate structure in order to fulfill someone's economic theories and remake the industrial map of the country.

Moreover, it must be remembered that the class rates which the South and Southwest would have the Commission change are for the most part rates which have been prescribed by the Commission itself after long

and thorough investigations. Although it is quite appropriate that the Commission from time to time reexamine its handiwork, nevertheless if we point out to the Commission that the evidence before it in this proceeding fails to show that the bases of class rates which it thus prescribed not so long ago have not become unlawful, we trust that we will not be charged with being selfishly obstructionist or unhelpful to the Commission.

ARGUMENT AND DISCUSSION OF THE EVIDENCE

PART ONE

(Docket 28300)

Are the present differences in class rate levels unlawful? Should the Commission require a uniform basis of class rates?

The Rates and Traffic Involved

By the order of investigation, the inquiry is limited to the class rates. Early in the proceeding, however, the question arose, which has not since been satisfactorily answered, as to just what rates and the rates on what traffic are involved and would be affected by any order of the Commission herein. The question is vital because until it is answered no one can know with certainty what shippers and industries would be affected by the order, what effect any change in rates would have upon the revenues of the carriers, and what competitive considerations must be taken into account.

For example, does the proceeding involve the rates on articles which move under exceptions to the classifi-

cation, like furniture? For the most part, the rates charged on furniture shipments are class rates, but they are not the rates which would result from the operation of the classification; they are class rates made applicable by the exceptions to the classification. This example is an important one from the standpoint of the State of New York because New York was once a large producer of furniture and has seen its furniture industry dwindle, while that of the South has grown. Must New York meet the contention in this proceeding that the rates on furniture are unduly preferential of the poor remnants of its once great furniture industry and are prejudicial to the growing furniture industry of the South and are therefore unlawful?

Then, again, there are the articles which move at rates quoted as percentages of the first-class rates, such as the column ratings. There are some column ratings in the classification and the rates on such commodities are admittedly in issue, but any rates quoted in other tariffs as percentages of first-class or as column rates could be changed, notwithstanding a change in the first-class rates, only if they themselves are in issue in the proceeding. If there is within the scope of this proceeding no question as to the lawfulness of rates published in a commodity rate tariff or in exceptions, although they may be shown as column rates or percentages of first-class, then if the Commission should order a change in the first-class rates a peculiar and much more complicated tariff situation than now exists would arise. In that event the present first-class rates would still have to be kept in existence to provide a basis for the column or percentage rates, and there would then

be two sets of class rates; one for class rate traffic and one for exceptions and for commodity rate purposes. During the course of the hearing some evidence as to rates on freight moving at column rates or exceptions was received. Other evidence relating to such rates was excluded.

It is our impression from the terms of the Commission's order and from the rulings from the bench that the only traffic the rates on which are definitely in issue in this proceeding is freight on which the class rates are charged by reason of a rating published in the classification itself.

If this impression is correct, two facts become of the greatest importance.

The first is that there is such a small volume of traffic moving within the South and between the South and the North the rates on which could be dealt with by the Commission's order in this proceeding that most of the evidence produced by the South and Southwest, as well as most of the evidence produced in opposition thereto, is beside the point; that the rates on such a small volume of traffic are involved that it is inconceivable that parity or lack of parity in the rates on such traffic can have had any effect on the economic development of the South or the movement of industry from the South to the North (except for the second factor hereafter mentioned); that the dissertations of economists called as witnesses by the southern states relate to some other proceeding than the present; and that most certainly the complaining states cannot claim any substantial injury from this particular rate adjustment.

The second fact is that within official territory on the other hand there is a substantial volume of traffic which does move on the class rates published as such, so that, paradoxically, while the proceeding as thus limited involves rates on an almost infinitesimal volume of traffic within and to and from the southern states which are complaining so loudly, it brings in issue the rates on a substantial volume of traffic within the North, where there is no complaint against the class rate adjustment.

This is certainly an anomalous situation. Most certainly it argues against any demand for a uniformity which would involve an increase in the levels of the northern class rates, because it is inconceivable that there can be any justification for increasing rates which are applicable to a large proportion of freight moving within the North for the purpose of achieving a rate parity which would then exist in the case of the rates applicable to only a very small proportion of the traffic within and to and from the South.

It is in this connection that Exhibit 228, identified by Witness Aitchison, is important. This exhibit, while by no means conclusive, represents the nearest approach in the record to an indication of the traffic the rates on which are involved in this proceeding, if the proceeding is limited as has been assumed. This exhibit is based upon a traffic test conducted by the O. D. T. for one day, September 23, 1942. The separation of the total traffic as between that moving on commodity rates, on exceptions and on class rates is not based upon a check of every way bill against the tariffs but represents an estimate made by members of the Commission's staff on the basis of their knowledge and

best judgment. This exhibit shows, among others, the following very significant facts:

Bearing in mind that the South in this proceeding is concerned with the movement of manufactured articles, this exhibit shows that only 3.9 per cent of the carload traffic in the manufactures and miscellaneous list moving from southern to official territory moved at class rates and only 7 per cent of the carload traffic in this category within southern territory itself was class rate freight. Despite the similar professed concern of the representatives of the Southwest with this proceeding, only 2.6 per cent of articles in the manufactures and miscellaneous group moving from the Southwest to official territory moved at class rates and only 9.2 per cent of the manufactures and miscellaneous articles within the Southwest moved at class rates. The figures as to official territory are strikingly in contrast with those just given. The exhibit shows that 14.1 per cent of the manufactures and miscellaneous within official territory moved at class rates while it is estimated that 18.5 per cent of the manufactures and miscellaneous shipped from official territory to the South, and 23.6 per cent and 24.7 per cent of the manufactures and miscellaneous transported from official territory to western trunk line territory and to the Southwest, respectively, were charged class rates. It seems probable that even these figures greatly understate the relative volume of traffic in official territory which moves at class rates. In the *Eastern Class Rate Investigation,* 164 I. C. C. 314, the Commission found (p. 391) that in addition to less-carload traffic "a *great deal* of very important carload traffic moves on class rates." (See also Appendix D to that decision, p. 468.)

It is plain, therefore, that if the issues in this proceeding are limited to the rates on class rate traffic as defined in Exhibit 228, namely, "traffic moving on regular class rate percentages in accordance with ratings in the regular classifications", the complaining states are making a terrible furore over a rate situation which can be of only very small concern to them. Little benefit could come to them from parity accomplished by a reduction in their rates, which would represent reductions on a very insignificant volume of traffic. Nor could they benefit, except in a dog-in-the-manger manner, by the consequences resulting from parity achieved through an increase in the class rates within official territory where the class rates are applicable to a substantial volume of manufactured articles.

However, because the complaining states in presenting their case, despite the rulings from the bench, have evidently proceeded upon the theory that they were asking equalization not only of the rates on class rate traffic itself as strictly limited, but also of all rates which might ultimately be affected by a change in the class rates, we shall proceed to discuss the evidence and issues in the case as though this were the fact. Moreover, we must be sufficiently realistic to appreciate that if parity of class rates is required, parity of rates on traffic moving under exceptions or at commodity rates published as percentages of first-class would be likely to follow.

As to the Scope of this Part of this Brief

This proceeding is so broad in the territory that it covers and the record is so voluminous that any attempt to deal with all of the issues or the questions arising

as to the relationships between the rate levels in all of the different territories would extend these pages beyond all reasonable bounds. Therefore, we will confine our discussion largely to the issues as they are presented as between the rate levels of official classification territory and southern territory. We do this for several reasons. First, as has been said, the proceeding is descended from the *Southern Governors Case,* involving rates from the South to the North and reflects continued activity of the Southern Governors Conference. Second, whatever is said with respect to the general issues of rate uniformity as between the North and the South is to a large extent equally applicable in principle, if not in fact, to issues between official territory and the southwestern or western trunk line territories. And finally, if the conclusion is required, as we believe, that there is no justification for ordering parity of class rates between official and southern territories, it is inconceivable that the Commission will conclude that the record affords a basis for requiring rate parity as between official territory and all other territories.

Summary of Contentions of the States and Commercial Organizations of Eastern Trunk Line Territory Regarding Class Rate Levels

We in the North do not here contend that the class rates within the South are necessarily reasonable. We do contend that on the record in this proceeding they have not been shown to be unreasonable. Between these two points of view there is a world of difference, which emphasizes one of the principal concerns of the Northern States in this proceeding. For as has been

said previously, we are vigorously opposed to a breakdown of the existing regulatory machinery and the substitution for it of rate-making, either on the basis of the outpourings of politicians or the economic theories of professors or government officials, however plausible they may be, as to what may be good for the country. We submit that it is vital that rates should be ordered changed only when found to be unlawful solely on the basis of evidence before the Commission. And we submit that the evidence in this record does not support such a finding or justify an order requiring nationwide parity of class rates for the following reasons:

(1) The territorial rate structure as reflected in the class rate levels which the Commission has heretofore prescribed is neither arbitrary nor obsolete. On the contrary, there are very practical and important reasons, both historical and present, for its existence.

(2) The economic arguments advanced by the South and Southwest in support of their pleas for rate parity are both unsound and without factual merit and, even if valid, would not justify an order condemning the present rates and requiring uniform rate levels, since:

(a) The Commission has no jurisdiction to condemn existing rates or prescribe new rates for the purpose of shifting industry or stimulating industrial development in one section of the country rather than another;

(b) The opinions of the so-called economic experts testifying for the South and Southwest are unsound and based on assumptions contrary to the facts;

(c) The industrial development of the South has not been prevented or retarded by the differences in class rate levels; on the contrary, the South's industrial development has gone forward with more rapid strides than that of any other section of the country;

(d) The differences in class rate levels have not prevented the free movement of manufactured goods from the South to the North and have not prevented southern goods from competing in northern markets;

(e) Despite the alleged importance of this proceeding to the South and all of the public furore regarding the interterritorial rate situation, there was a striking lack of testimony from southern shippers of importance complaining of the existing class rates or of any restrictive effect which they have on southern industry;

(f) On the contrary, a large proportion of important southern industries are vigorously opposed to the demands of the Southern Governors;

(g) The establishment by governmental order of a basis of rates for the purpose of attracting industry to a particular section of the country, besides being beyond the authority of the Commission, is economically unsound in that rates should be made in the light of conditions as they have developed rather than like flypaper for the purpose of catching any industries that may be floating around, and

(h) The Commission cannot disregard the resultant injury to other sections of the country from the prescription of such rates.

(3) Parity of class rates alone without parity of commodity rates on inbound raw materials would be unjust to the North and produce a rate structure unduly preferential to the South and Southwest and would not constitute real rate equality, since:

(a) Offsetting the somewhat higher level of class rates in the South than in the North, the South has much lower rates on inbound raw materials and low grade freight;

(b) If, contrary to our contention, the evidence as to average costs requires parity of class rates, it equally requires parity of inbound raw material rates;

(c) So long as the rates on raw materials are not equalized, equalization of the class rates alone would not produce real rate parity but would give the South a preferential rate basis and discriminate against the North;

(d) Equalization of class rates only accomplished by reducing the class rates within the South if not accompanied by offsetting increases in the rates on raw materials in the South would adversely affect the revenues of the southern carriers;

(e) On the other hand, any upward change in the class rates in official territory for the sake of accomplishing uniformity with no corresponding change in the raw material rates in the South would mean an increase in the rates which move an important part of official classification traffic for the sake of a parity which would affect only a very small proportion of traffic in the South while

at the same time it would leave the South with the benefit of its lower raw material rates on a large volume of its traffic.

(4) The evidence as to average costs does not justify a finding that the present class rate structure is unlawful because of the difference in levels between the North and South, since:

(a) Even if the cost figures are correctly and fairly computed, they purport to be only average costs so that equality of such figures would be no proof that there should be parity of rates on a limited proportion of the total traffic where the rate structures in the two territories have been evolved on entirely different theories as to the proportions in which the different kinds of freight should contribute to the total transportation burden and where the volumes, proportions and kinds of freight in the two territories differ radically;

(b) There are no figures in the record purporting to show the relative costs of transporting class rate traffic by which the class rates may be measured;

(c) Even if average cost figures could be accepted as a basis for testing levels of class rates or rates on any particular category of freight, the computed figures in the present record cannot be used for this purpose since they do not represent territorial averages corresponding with the territorial limits of the various class rate territories;

(d) The computed figures in the record produce distorted results for the purposes here because of improper groupings of the carriers in computing the averages;

(e) The wide variations among the southern railroads in the proportions of coal traffic to total traffic and consequently in their respective cost figures, render the computed averages for the South totally unrepresentative of the costs of transportation on large and important railroads within the South;

(f) The computed cost figures for the South are reduced and distorted by the inclusion of operating results in the handling of coal actually moving within official territory but attributed to the South for accounting purposes.

(5) If, as seems probable, a revision of the class rates cannot be accomplished without corresponding changes in the exceptions and in column rates and rates related to first-class, then the revenue effect upon the southern railroads of accomplishing rate parity by reducing the southern class rates to the official level would be so disastrous as to require the conclusion that parity could not be achieved without an increase in the class rates in official territory, which is certainly not justified by the evidence because:

(a) There is no evidence which would sustain a minimum rate order requiring an increase in the official territory class rate levels;

(b) Such cost computations as there are afford no indication that the class rates in official territory are unremunerative or less than minimum reasonable rates;

(c) It is inconceivable that class rates which the Commission in the *Eastern Class Rate Investigation,* Docket 15879, 164 I. C. C. 314, prescribed as

maximum reasonable rates have now become less than minimum reasonable rates;

(d) An increase in the class rates within official territory would be unjustified even on the theories of the southern economists since it would involve increases in charges for transportation entirely within official territory of commodities which cannot, in the nature of things, ever be produced in the South and as to which there is and can be no southern competition, and

(e) Most of the southern and southwestern spokesmen disclaim any desire to have the rates in official territory increased and oppose the entry of any minimum rate order in this proceeding.

(6) The evidence in the record in this proceeding, relating as it does largely to transportation and economic conditions in 1939, affords no basis for an order prescribing rates to be effective in the future since war has intervened and brought such changes and such prospects of changes in the industrial, manufacturing and transportation situations that it must be presumed that the facts in the future will be different from the facts in 1939.

POINT I

The territorial basis of making rates, which inevitably carries with it the likelihood of differing rate levels, is not presumptively unlawful or obsolete, nor is it an artificial tariff wall. On the contrary, there are both historical and present reasons for its existence.

The division of the country into so-called territories for rate-making has been the recipient of much abuse by various public spokesmen for the Southern and

Western States, who obviously cannot be expected to know the reasons why the rates were thus made. It has been a victim of uncomplimentary epithets from others who have professed to be students of economics or transportation and, who, if they were such, should know better. The difference in class rate levels has been referred to as an anachronism, as a tariff wall, and as an artificial barrier set up and maintained by powerful interests in the North to prevent the industrialization of the South and keep the South in the position of a "colony". The Commission knows and the evidence in this proceeding shows that such descriptions of the rate situation have no relation to the truth.

The reasons for the development and continuance of rate territories were outlined in considerable detail by Witnesses Bell (R. 3397-3432) and Van Metre (R. 3298-3304). They have been noted in several decisions of the Commission, among them the following:

Southern Class Rate Investigation, 100 I. C. C. 513; 109 I. C. C. 300, 303;
Eastern Class Rate Investigation, 164 I. C. C. 314, 391;
Western Trunk Line Class Rate Cases, 164 I. C. C. 1;
State of Alabama v. *New York Central,* 235 I. C. C. 255.

Briefly summarized, the situation depicted by the testimony referred to is the following:

When railroad transportation first began the railroads were small units. Each railroad made its rates to meet its own requirements. This situation continued until a few years before the turn of the century,

after which, through consolidations and mergers, the major systems came into being. As this development took place, rate making for each system had to be conducted from the standpoint of the need of each system as a whole. As these large systems developed in the several territories, competition between them within the territories became an increasingly important factor. Almost every large center was served by more than one railroad. This led to the creation of organizations for cooperative rate-making. In the nature of things these joint organizations for rate making were maintained by railroads which were in competition with each other and had an interest in maintaining equal rates between competitive points and therefore, had a common concern in the territory served by them. Thus, the activities of these rate-making organizations were naturally limited in their territorial scope to the territory served in common by the various competing railroads making up their memberships. This competitive situation and the fact that all the railroads in one section of the country generally encountered much the same transportation and business conditions, which, however, differed greatly from those in another section of the country, were the causes of the division of the country into rate territories for rate-making and classification purposes. It was inevitable, since men are not all endowed with the same mental processes and ideas, that different plans and theories of rate making should be followed by these different groups especially since there were great differences in the conditions encountered by the railroads in the various sections of the country and in the natures and quantities of the freight which they found themselves called upon to handle.

The North had begun to industrialize long before railroads were constructed and the railroads inevitably found themselves called upon when they came into existence to provide transportation for the movement of manufactured articles. Then, too, the North was blessed with large coal deposits; iron production had begun at various places within the North at an early date; the opening of the Missabe Range brought iron ore down the Great Lakes to points in central freight association territory and to the iron and steel industry of the Middle West; copper was produced in northern Michigan and brought down the Lakes. And all of these and other circumstances produced large volumes of freight for the northern railroads which gave them a heavy backlog of traffic which, in the nature of things, could not be enjoyed by the railroads of the South. The South, on the other hand, with its warmer climate and its economics based on slavery, had developed primarily as an agricultural region and when the railroads came into existence the articles which they had to move were largely the products of agriculture. Naturally, however, the southern railroads desired to develop manufacturing industries on their lines and the southern states wanted to stimulate manufacturing, and the method they chose to accomplish this was to establish low rates for the movement of the raw materials produced within the South to centers in the South for manufacture there.

All of these considerations inevitably produced differences in the patterns of the rate structures in the two territories.

The evidence in the present record which is discussed more fully later herein and which deals with the

differences in the distribution of the "traffic burden" in the North and in the South, clearly shows that these fundamental differences still persist. Because nature has differently scattered its resources and, because both the kinds and the volumes of freight to be moved still vary to a great degree as between different sections of the country, the original reasons for the growth of freight rates on a "territorial" basis still largely persist.

Furthermore, notwithstanding the development of our large railroad systems, one of the most important facts in the present connection is that with few minor exceptions no railroad systems have developed beyond the boundaries of their respective rate territories. None of the official classification lines reaches into the South or into the West. Of the southern railroads, only the Illinois Central and Louisville & Nashville, with a short line of the Southern extend into official territory. The lines of the western carriers terminate at the territorial boundaries. Thus the frontiers between one territory and another are, generally speaking, marked by the termini of the railroads in the respective territories. Hence, these boundaries are not artificial barriers but each constitutes a natural dividing line between one group of carriers which are competitive and have common interests with each other and another group of carriers which are similarly competitive and have common interests among themselves.

The facts just recited also add a financial aspect to the matter. While a large railroad system, such as the New York Central or one of the transcontinental lines, traverses a wide territory which may have nearly as great variations as would be found in going from one

rate territory to another, nevertheless, a common rate level throughout may be possible because all revenues of a system go into a common treasury and if a scale of rates produces too little revenue on a part of the system where operating conditions are unfavorable this may be offset by the profits produced by these same rates on another part of the system where operating conditions are better. However, in the case of two railroads on opposite sides of a territorial boundary there would be no opportunity, except a limited one afforded by adjustments of divisions, for the net revenue results of a uniform scale of rates on one railroad to be offset by the different net revenue results produced by that same scale of rates on the other.

For these reasons, we submit that the territorial basis for making rates, far from being arbitrary, artificial or archaic, has a real reason for being and that unless and until by further mergers or consolidations greater railroad systems are developed which will traverse the entire country, there are practical reasons for the maintenance of the territorial rate-making methods.

Moreover, territorial rate making has one further advantage: that the traffic officials responsible for making rates are necessarily in more close touch with the transportation considerations and with the needs of shippers than would be possible if there were a uniform level of rates extending from New Orleans to the State of Maine governed by a remote centralized rate making organization.

But so long as rates are made on a territorial basis by the officials or groups of officials of carriers in each territory, it is inevitable that there will be differences

in the theories or principles of rate making employed and in their application. To compel uniformity of rate levels by order of the Commission would be tantamount to denying that the different rate-making groups may concern themselves with the problems of their own territories or that they may exercise independent business judgment—or what is called "managerial discretion."

POINT II

Even if the record showed that a change in the class rate structure is necessary to make possible and stimulate the industrial development of the South and Southwest, the Commission is without power to require a revision of the class rates for such a purpose.

The demand of the South and Southwest for class rate parity has for its major premises the claims that the present differences in the class rates have retarded the industrial development of the South, and promoted that in the North; that because of these differences per capita earnings and living standards are lower in the South than in the North; that the class rate structure stimulates only semi-manufacturing processes in the South and the movement of goods as semi-manufactured articles to the North for final manufacture; that the location of manufacturing industries in the South and Southwest should be promoted, and that therefore the class rate levels should be equalized to bring this about. Of course, this plea, as we shall later observe, purports to have a transportation justification in the claim that the transportation costs are approximately the same in the several territories. However, the cry for economic help in fostering the industrial growth of the South at the expense of the North and the lament that the class

rate differences have discouraged the location of industries in the South, have prevented southern industries from shipping into the North and have kept the South in a condition of "a colony" are the real reasons asserted for demanding class rate parity. And of course, if the evidence as to costs does not support the southern claim these lamentations are the *only* grounds for the demand.

Admittedly, proof, if there were any, that the class rates prevent the free movement of manufactured goods from the South would be relevant although by no means controlling on the question of the reasonableness of the rates under Section 1 of the Act. But there is certainly no proof that the class rate structure as a whole has had this result, and the few examples of shippers who came forward to testify about their alleged troubles, fails to show that even in individual instances the class rate levels have impeded the free movement of products which southern manufacturers could reasonably expect to sell and ship to the North.

Admittedly, also, proof of loss of markets or inability to ship in competition with particular competitors would be relevant in support of a claim of injury to sustain an allegation of discrimination or undue preference and prejudice under Sections 2 and 3. But most certainly the record here does not make even a beginning of affording a foundation for an order under either of these sections.

Therefore the cry of woe so loudly and publicly uttered by the southern spokesmen and presented in somewhat more restrained form on the record here, is an appeal to the Commission to order parity of class rate levels, not because the present rates violate any

particular provision of the Act, but in the interest of the economic ambitions of the South.

It is, however, too well settled in our law for a contrary view now to prevail, that it is not the function nor within the authority of the Commission to regulate or order changes in rates for any such purposes.

The opinion of Circuit Judge PARKER for the statutory Court in *Anchor Coal Co.* v. *United States,* 25 F. (2d) 462, in which the Court enjoined an order of the Commission as in excess of its authority, contains many pertinent expressions such as:

> "It is perfectly evident * * * that in reducing the rates from the northern field and in directing the cancellation of the reduction from the southern field, the Commission was primarily concerned not in fixing rates, but in fixing the differential which was to prevail between the two fields * * *. But it must be manifest that increasing the differential to meet such a situation (and the same would be true of decreasing a differential) is not regulation of rates but regulation of industrial conditions under the guise of regulating rates * * * it is in essence a regulation of industrial conditions through manipulation of rates" (p. 470).
>
> * * * * * * * * * *
>
> The Commission does not have the right * * * to regulate industrial conditions under the guise of regulating rates.
>
> * * * * * * * * * *
>
> Nowhere (in the Act) is it provided that * * * the Commission * * * may fix rates * * * with a view of placing competing producers upon an equality * * * " (p. 472).

See also the *So. Pacific Co.* v. *Interstate Comm. Comm.,* 219 U. S. 433; *I. C. C.* v. *Diffenbaugh,* 222 U. S. 42.

Sharfman in his work, "The Interstate Commerce Commission," says (Vol. III-B, p. 658):

> "On the whole it may fairly be said to have been the dominant attitude of the Commission that neither the carriers in the first instance nor the regulatory body in passing upon the propriety of their tariffs might lawfully attempt so to adjust rates that business would or would not be done in any particular locality."

In *Stoves, Ranges, Boilers, and House-Heating Furnaces,* 182 I. C. C. 59, it was said at page 68:

> " * * * the position of the southern interests is in effect that we should require the northern carriers to join with the southern carriers in joint rates from the South to the North sufficiently low to enable southern manufacturers to obtain an amount of trade in the North satisfactory to them. With this contention we can not agree. It is not within our power to equalize natural disadvantages of locations."

Commissioner Eastman in a concurring opinion stated at page 74:

> "In this case the southern shippers are asking only that transportation conditions be considered in determining the proper rate relation, and they are on sound ground in so asking. However, it is undeniable, I think, that in the past both southern manufacturers and southern carriers have shown a tendency to demand that the rates to the North be equalized in level with those within the North, on the ground that such equalization is commercially essential to the southern industries. It is a sufficient answer to say that it is not our province to equalize commercial conditions. However, the evidence in this case has served a useful purpose in making it quite clear that the southern manufacturers have certain advantages over their

> northern rivals, so far as operating and overhead costs are concerned, which would have to be taken into consideration if it were our duty to equalize commercial conditions through an adjustment of freight rates."

Whatever power there be to establish or revise rates for the sake of stimulating the location of industry is essentially one of carrier management within what is called the "managerial discretion" of the railroads. Of course this discretion may not be exercised by the railroads in such a way as to produce violations of the Act, but unless violations of the statute are proved the Commission may not interfere or require changes in rates merely because its own ideas of what is good for the country or for a particular section differ from those of the railroads.

The distinction between the functions of regulation and those of management has been clearly recognized in decisions of the courts and regulatory commissions.

In *United States* v. *Illinois Central R. R. Co.,* 263 U. S. 515, 522, the Court said:

> "A carrier is entitled to initiate rates and * * * to adopt such policy of rate-making as to it seems wise."

Again in *United States* v. *Chicago, M., St. P. and P. R. Co.,* 294 U. S. 499, at page 506, the Court used the following language:

> "We lay to one side cases of discrimination or preference or rivalry so keen as to be a menace to the steady and efficient service called for by the statute. Interstate Commerce Act, § 15a. Those tendencies excluded, 'a carrier is entitled to

initiate rates and, in this connection, to adopt such policy of rate making as to it seems best.' ''

In *Interstate Commerce Commission* v. *Chicago G. W. Ry.,* 209 U. S. 108, the Court said (pp. 118-119):

"It must be remembered that railroads are the private property of their owners; that while from the public character of the work in which they are engaged the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet in no proper sense is the public a general manager. As said in *Int. Com. Com.* v. *Ala. Mid. R. R. Co.,* 168 U. S. 144, 172, quoting from the opinion of Circuit Judge Jackson, afterwards Mr. Justice Jackson of this court, in *Int. Com. Com.* v. *B. & O. R. R. Co.,* 43 Fed. Rep. 37, 50:

'Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and of their own situation and relation to it, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits.' ''

In *Iron and Steel Articles From the South,* 176 I. C. C., 345, the Commission said (p. 353):

"It is desirable to point out, in response to the expressed desire of the southern manufacturers, that we prescribed the substitute basis, that it is

not the province of the commission to prescribe rates so as to enable shippers to overcome natural disadvanges of location, *Elias & Bro.* v. *P. R. R. Co.,* 139 I. C. C. 103, but *carriers can do some things* in lawful competition *which we could not require them to do,* or charge them with undue prejudice for not doing. *Sioux City Terminal Elevator Co.* v. *C. M. & St. P. Ry. Co.,* 27 I. C. C. 457, 463." (Italics ours.)

In *Lumber from Pacific Coast to Eastern Points,* 210 I. C. C. 317, the Commission said (p. 346):

"* * * However, the Supreme Court of the United States has reminded us that it must be remembered that railroads are the private property of their owners; that while, from the public character of the work in which they are engaged, the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet in no proper sense is the public a general manager. *Interstate Commerce Commission* v. *Chicago G. W. Ry. Co.,* 209 U. S. 108, 118. The respondents may be mistaken in their judgment as to the effect of these reductions, but that fact is not determinative of the lawfulness or unlawfulness of the rates in question. They are entitled, as a matter of right, to make the experiment unless upon this record we can say that their action or its probable results will violate some provision of the act. The questions that have been raised in this case and must be answered by us are well answered in *United States* v. *Illinois Central R. Co., supra,* wherein the court said:

It is true that the law does not attempt to equalize opportunities among localities, *Interstate Commerce Commission* v. *Diffenbaugh,* 222 U. S. 42, 46; and that

the advantage which comes to a shipper merely as a result of the position of his plant does not constitute an illegal preference. *Ellis* v. *Interstate Commerce Commission,* 237 U. S. 434, 445. To bring a difference in rates within the prohibition of Sec. 3, it must be shown that the *discrimination practiced is unjust when measured by the transportation standard.* In other words, the *difference in rates cannot be held illegal, unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions."*

It is plain, therefore, that even if the Commissioners may be swayed by the laments of the southern publicists (which they utter in off-moments when they are not glorifying the great industrial growth of the South); or if the ideas of the economic spokesmen for the South strike a responsive chord; or if the Commissioners themselves may think that a uniform basis of class rates would be desirable, still the Commission may not condemn the present class rates or order the railroads to substitute therefor a single class rate basis throughout the country east of the Rockies or of the Mississippi, unless the preponderance of the evidence before the Commission in this proceeding requires a finding that the present class rates are unlawful in violation of one or more provisions of the Interstate Commerce Act.

POINT III

The economic theories advanced in support of the demand for a general revision of the class rate structure for the purpose of stimulating the location of manufacturing plants in the South rather than in the North rest upon the assumption, which is incorrect, that the differences in class rate levels were the cause of the earlier and greater industrial development of the North and invoke a theory of rate making which is unsound.

In support of the demand that the class rate structure should be remade with the aim of inducing industries to locate in the South rather than in the North, there were presented extensive statements and opinions of professorial witnesses designed to create an impression of economic justification for such action. The theories expounded by these witnesses will be discussed more fully presently. For the purpose of the present point, the fact to be noted is that all of these pronouncements proceeded from the premise that it is the class rate structure which has been responsible for the development of manufacturing in the North and for the delay of the South in turning to an industrial economy.

Now, while we in the North oppose any rate change undertaken for the deliberate purpose of inducing manufacturing industries to locate in the South rather than the North for two very sound reasons, apart from the injury which the North would suffer, *i. e.,* (1) that the Commission has no power under the statute to order rate changes for such a purpose, and (2) that the evidence does not support the claim that the class rate structure has obstructed or is now obstructing the industrial development of the South, we submit further

that the premise is utterly unsound that the earlier industrialization of the North was caused by the lower class rates in the North. Moreover, even if the purpose of inducing the location of industries in the South might be a valid ground for changing freight rates, it would be so only if there were a reasonable probability that the means would produce the desired end. On the contrary, the evidence raises serious doubt as to the extent to which rates on outbound manufactured goods may be a factor in determining the location of manufacturing plants. And although, if this is so, it may be said to raise an equal doubt as to whether the North has anything to fear from an equalization of the class rates (except as this should be accomplished by an increase in the charges on all class rate traffic within the North as well as interterritorially), it certainly destroys the economic argument upon which the South's case rests.

The record makes it entirely clear that the class rate structures followed and were not the cause of the different economic development of the North and of the South.

As pointed out by Mr. Bell and Professor Van Metre, the rate structures in these territories grew up as a result of the different economic conditions already existing in the territories. What became known as official territory did not become industrialized because of its railroad class rate structure. Rates in that territory were constructed as they were because it was already industrialized and the population was centralized in the towns and cities. On account of the existence of raw materials necessary for industrial production, of water power and of navigable waterways

and under the influence of the climatic conditions and the characteristics of the settlers of that region manufacturing industries had developed in the North long before the railroads came into being (R. 3399-3400).

The cotton mill industry became established in New England, not because of railroad facilities and rates, but because cotton spinning required a moist atmosphere and abundant water power (R. 3779-80). The boot and shoe industry, which developed to such large proportions in New England, grew out of business carried on by the local cobblers in that section who were skilled in making footwear. Other industries, such as the manufacture of jewelry and pottery, hosiery and knit goods, developed in official territory because skilled labor and artisans were available there (R. 3780-81).

The South, on the other hand, long before the Civil War, had devoted its energies almost entirely to agriculture, the principal products of which were cotton and tobacco, with Kentucky depending very largely on the distilling of whiskey (R. 3400-3402). After the Civil War the South was broken financially and economically. The only money crop was cotton and in a lesser degree, tobacco. Literally, "cotton was king" and the prosperity of the South was dependent upon the production of this commodity and the demand for it abroad and in the New England States (R. 3299-3302, 3402). The South was also rich in timber resources, which were developed without regard to forest conservation (R. 3304). The fringe along the South Atlantic coast produced great quantities of naval stores, which are not in the same demand now as then. Other industries were engaged in the production of billets made of hardwood for implement handles, tool handles and gun

stocks. One industry which at one time was important was engaged in the production of insulator pins and cross arms for telegraph lines. These have long ago been supplanted by steel (R. 3403). This addiction to an economic pattern dependent principally upon agriculture had become a matter of concern to leaders of the South even before the outbreak of the Civil War and obviously, therefore, before the class rate structures came into existence. These leaders advocated an economy of a more diversified sort (R. 3300-01; 3803-04).

The essential point here is that it was not, as the economic witnesses for the South would have the Commission believe, the lower class rate level in the North that caused manufacturing industries to develop in the North and caused the South's economy in the early days to be largely an agricultural one.

Dr. C. S. Duncan, economist for the Association of American Railroads, and Professor Van Metre both testified that freight rates on manufactured articles constitute such a small element in the ultimate cost of the finished goods that they can have very little influence in determining where particular industries shall locate (R. 3290, 3775-87).

Dr. Duncan stated that the following factors generally control in varying degree the location of industries at particular points: Nearness to and cost of raw materials, nearness to markets, available water power, climate, labor supply, available capital, momentum of early start and personality of the individual or individuals controlling the industry (R. 3778-87). In the year 1939 freight revenue on freight in the manu-

factures and miscellaneous list constituted only 5.3 per cent of the destination value of manufactured goods, and of course any difference in freight charges produced by the differences in the class rate levels must be only a small fraction of this figure. Indeed the outbound rates on many manufactured products are of so little importance that thousands of commodities have a nation-wide market regardless of where the producing plants may be located.

Both Dr. Duncan and Professor Van Metre referred to numerous instances in which industries had developed or had migrated from one section of the country to another where it was quite clear that freight rates had not been a controlling factor. The controlling factors in the migration of the textile industry from New England to the South were the accessibility to raw materials and the low cost of living in the South (R. 3779-80). A shift in the location of the glass industry from New Jersey and Ohio to Indiana was induced by the fact that natural gas was available in the new location (R. 3780). The location of other industries, such as jewelry, pottery, hosiery, knit goods, boots and shoes was influenced primarily by the supplies of skilled labor (R. 3780-81). In some instances large industries have located at particular points because of the individuals connected with them. Illustrative of this was the location of the Ford Motor industry at Detroit and of the manufacture of cereal coffee at Battle Creek, Michigan (R. 3784).

The tobacco industry became concentrated in the South around Durham and Winston Salem, N. C., and in Virginia, principally because it was the belief of those responsible that cigarettes, smoking tobacco and

plug tobacco could be manufactured more cheaply and efficiently in the South than elsewhere (R. 3810-12).

Professor Van Metre pointed out that freight rates do not explain why brass is manufactured in Connecticut, machine tools in Vermont, shirts and collars in Troy, N. Y., women's dresses in New York City, etc. He further pointed out that the South had the chance to engage in the development of new products, such as plastics, synthetic rubber, etc., even before freight rates had been established on them in the East or West (R. 3305-07).

Witness Bauman, who had had wide experience in advising as to plant locations, testifying as a witness for New Jersey, said, regarding the location of plants in New Jersey:

> "* * * the reason for the location of the plant in New Jersey is because New Jersey's being in the center of a large consuming area; and what I am trying to show by this exhibit (Exhibit 161) is that it is utterly fallacious to attribute to New Jersey, its industrial development to a preferential rate structure" (R. 3356).

Exhibit 161 submitted by Mr. Bauman in part represents the result of a study of the considerations determining the locations of various manufacturing plants. Of these considerations the outbound freight rates on the manufactured goods were a minor factor (R. 3349-3365).

Witness Spottswood and also Witness Mitchell, Professor of Ceramics Engineering of the Georgia School of Technology, referred to the fact that the manufacture of pottery, chinaware, earthenware, etc., lan-

guishes in the South despite the fact that there are large clay deposits within that territory (R. 1620-24; Ex. 76). Although Witness Spottswood attributed the failure of these industries to develop in the South in part to the rates applicable to the transportation of their products from southern territory to official territory (R. 1401; Ex. 76, p. 26), there is abundant proof in the record that the outbound freight rates have not been a factor at all, that there have been various considerations which have prevented the location of potteries in the South and that the chief one has been the lack of skilled personnel. (Ribe, R. 3068-72; Wells, R. 3153-62.)

Inbound rates on raw materials and other commodities entering into the manufacture of the outbound products have a much more important bearing upon the location of industries than do the outbound rates on manufactured articles (R. 3778, 3787-88). Here, of course, the South has an advantage as will be shown more fully later.

In short, any theories that rest upon the assumption that the class rates when applicable to the outbound movement of manufactured articles have controlled the location of manufacturing plants, have a doubtful factual basis.

Moreover, for this and other reasons, any attempt to revamp the class rate structure for the purpose of bringing about the location of manufacturing plants in any particular section of the country would be unsound.

Such witnesses as Van Metre, Bell, Oliver and Widell testified that the only sound method of rate making is to establish rates to meet the needs and requirements of industries that have already become established or are actually considering locating at particular points

rather than to establish a rate structure *ex cathedra* with the hope that industries may thereafter adjust themselves to it (R. 3296-97, 3397).

Professor Van Metre described the position of the South in this proceeding as just the reverse of the remark of Emerson (or was it Elbert Hubbard) that "if a man builds a better mouse trap than his neighbor, even though he lives in the wilderness, the world will make a beaten path to his door". The South's attitude, he said, is that "if you (I. C. C.) will make a beaten path to my door, I will build you a better mouse trap". He continued:

> "Now, I claim the South is not a non-manufacturing community (the record shows it is fast becoming one) because of its class rate structure, but it has its present class rate structure because of the character of the South's economic development" (R. 3298).

POINT IV

The evidence requires a finding that the industrial development of the South has not been restricted by the class rate structure—nor by anything else.

The plea of the South and Southwest for a revision of the class rates has as its major premise and first talking point the claim that by the differences in the class rate levels the industrial development of the South has been prevented and the South has been kept in the condition of "a colony". But what was said under the previous point certainly raises a presumption that this claim cannot be correct. And if it affirmatively and conclusively appears from the proof that the industrial development of the South has *not* been hindered, and that the South, instead, has been making

rapid strides in industrialization under the existing rate structure, the basis of the South's plea becomes non-existent and the loud public wailings are proven false. And such is the fact, as the record here shows.

Moreover, the theory of the South's claim is that the alleged prevention of its industrial development has been brought about because the class rates have made it impossible for southern manufacturers to sell their goods in the North in competition with the products of northern industry. This theory, too, is without factual support. It is not borne out by the testimony of southern witnesses. It is disproved by the evidence produced by northern interests.

A. *Not only has there been no prevention of the industrial growth of the South, but on the contrary in recent years the South has had a greater industrial growth than the North.*

The statistical data of record establishes, beyond question, that in recent years the industrial development of the South, far from being retarded by the freight rates, has been relatively greater than that of the country as a whole and of official territory. The extent of the development of industry in the South compared with that of other territories is demonstrated by the tables and charts included in Exhibit 159 prepared by Witness Robinson of the Division of Commerce of the State of New York.

Since the question is whether or not the South is growing industrially, it is obvious that statistics for a period of years must be examined. The issue is not whether the South has many or few industries compared with the North, but whether its manufacturing

is increasing or decreasing. Hence various statistics produced by southern interests, such as those in Exhibit 76 showing the facts for a single year are wholly immaterial. Most of the figures in Witness Robinson's Exhibit 159 cover at least a ten-year period.

The tables and charts in this exhibit should effectively dispel any idea that either the freight rate structure or anything else has interfered with the industrial growth of the South. A few examples will suffice here by way of illustration.

Thus during the ten years from 1929 to 1939 the number of wage earners in manufacturing industries in the country as a whole has *decreased* 11 per cent, in the Middle Atlantic States the decrease has been 12 per cent and in New York State 13 per cent. In the South on the other hand there has been an *increase* of 5 per cent.

Manufacturing wages for the country during this same ten-year period decreased 22 per cent, in the Middle Atlantic States 26 per cent, but in the South only 3 per cent, while some Southern States actually had increases.

The values of manufactured products of the country as a whole decreased 19 per cent from 1929 to 1939, in the Middle Atlantic States the decrease was 25 per cent and in New York 29 per cent, while the southern states enjoyed a 1 per cent increase, with North Carolina having an increase of 7 per cent.

One of the laments of the southern economists is that their workers are not moved from agriculture to factories to earn the higher wage levels of manufacturing labor. Page 14 of Exhibit 159 shows, however, that in the period from 1930 to 1940 there has been a greater

decrease in agricultural employment in the South than in official territory and that there has been a large increase in manufacturing employment in the South and a decrease in the North.

Income payments in 1941 for the United States were 111 per cent of those of 1929, for official territory 100 per cent and for New York 95 per cent but for the South they reached *128* per cent.

Turning to individual manufacturing industries, a few examples should be sufficient to contradict any claim that the freight rates have favored the growth of industry in the North and curbed that of the South. Thus in the canned fruit and vegetable industry during the period 1929-1939 the number of wage earners in the South increased 68 per cent as compared with an increase of only 28 per cent for official territory.

The textile industries are of course very sad examples for the North with great decreases in wage earners, products and plants in contrast with increases in the South.

The furniture industry provides another unhappy story for the North and especially for New York, which had a 33 per cent decrease in wage earners as against an 18 per cent increase for six southern states.

The stove and other heating and cooking appliance industries are another tragedy for the northern states. The wage earners in these industries in the North decreased 21 per cent and in New York 22 per cent, while there was a 39 per cent increase in the South.

This list is of course not complete. In one or two instances the South did not fare so well, but on the whole the conclusion is inescapable that although the

South's totals may be smaller than those of the North, its progress has been greater. And this progress has not been confined, as the southern spokesman would have the Commission believe, to low-grade or semi-processed goods, but includes finished products of a high degree of manufacture.

Paper is certainly a manufactured product. The paper industry in the South has had a phenomenal growth. Witness Bell testified that in 1928 the railroads of the South originated 314,354 tons of paper and paper products, that eleven years later in 1939 this originated tonnage had increased to 1,251,000 tons and two years later in 1941 to 1,810,000 tons or 576 per cent of the 1928 volume (R. 3555-6).

One of the somewhat amusing episodes in this proceeding arose from an example of the not uncommon conflict between justified local or sectional pride and a desire to paint a gloomy picture for ulterior ends. The South called as a witness to support their tale of woe a Mr. Morrell, editor of the Manufacturers Record, an industrial publication devoted to the cause of the industrial development of the South. Mr. Morrell testified at first that the manufacturing industries of the South were generally small. He said that over 36 per cent of all manufacturing plants in the South and Southwest have an individual output of less than $20,000 per year (R. 1774). Parenthetically, this statement is not very significant for it appears that the same is true of 32.9 per cent of all manufacturing plants in the United States and 30.6 per cent of those in official territory (R. 4042, 43, Ex. 180). But then he went on to testify that he had made efforts to induce industries to locate in

the South to use its raw materials and that of these efforts. "Some have been successful. Some have not" (R. 1777).

How really *successful* Mr. Morrell and other promoters of the South have been in inducing industry to locate in the South and how negligible a barrier the freight rate situation has been are shown by Exhibits 160 and 219 which contain excerpts from Mr. Morrell's own publication and also from the "Blue Book of Southern Progress", likewise published by his concern. From the excerpts from these publications contained in these exhibits we learn that while coming before this Commission to complain that the South is being kept in bondage and that its industrial development prevented, the Southern Governors proclaim in print that "in two years the value of the South's manufactured products has increased approximately 35 per cent, and is now two and a half times the value of its agricultural output"; that "within the past few years the South has shown immense business and industrial expansion"; that "American industry's faith in North Carolina is being expressed by its investment of more than $100,000,000 in the last three years for new or expanded plants"; that "Alabama increased the value of its manufactured products from $375,000,000 in 1935 to $573,000,000 in 1937, or an increase of more than 60.5 per cent"; that "the growth which is taking place in the Southern States can be justly termed phenomenal"; that "the South is achieving new records in the part it is taking in national production"; and that "this section (the South) has since 1929, and through subsequent years of depression, made greater progress than the rest of the United States." We read page after

page listing new industries that have located in the South. Nor are they confined to the production of semi-processed articles as the South's spokesmen in this case have claimed. They include of course cigarettes and textiles, but also footwear, household furniture, paints, stoves, ranges and water heaters, tin cans, clothing, mattresses and bed springs, candy, canned fruits and vegetables, drugs and medicines, flour, optical goods, fluorescent lamps. Indeed the "Blue Book of Southern Progress" says that "the number of different kinds of manufacturing is now so large that a breakdown by kind and State is impossible owing to lack of space."

And so, what now of the claim that the freight rates or anything else constitutes a barrier to the industrial growth of the South?

B. *The testimony of Southern witnesses fails to disclose any important interference caused by the difference between the class rate levels with the growth of their industries or the sales of their goods.*

In view of the great campaign of publicity and of the broad generalities uttered by the Southern Governors and their spokesmen, rate witnesses and economists as to the woes which the South suffers from the freight rates, one of the most striking features of this proceeding has been the small number and generally insignificant character of the few real shippers who came forward to testify and the feeble nature of the testimony they gave. Certainly, if it *were* the fact that the freight rate structure as a whole or the class rates in particular made it so difficult for southern industries

to do business and to sell their wares in the North, their own selfish interests would have led at least a moderate number of the many industries proclaimed in the "Blue Book of Southern Progress" to take advantage of this proceeding to come forward and tell their troubles. But they did not do so. And almost as significant as their absence was the weak and unconvincing testimony of the few who were willing to be called as witnesses for the Southern Governors.

Several of these witnesses complained of rates which are not involved in this proceeding. Illustrative of this group was Witness Chilewich, appearing on behalf of the Andrews Tanning Company located at Andrews, N. C. He testified that the existing rates subjected his company to "considerable difficulty" in meeting the competition of other tanneries (R. 1517-21). It appears, however, that the rates on outbound movements of leather from his plant are commodity rates and hence are not involved in these proceedings (R. 4003-4). It appears further that there are numerous other tanneries located at other points in the South, including two plants located on the same branch of the Southern Railway as is the plant of the Andrews Tanning Company. The present rates from these tannery points to the North were established as a result of conferences between the southern and northern railroads and southern shippers of leather, as a result of which the latter accepted the existing rates as satisfactory to them (R. 4003). The Andrews Tanning Company only began operations in the South at Andrews, N. C. in April of last year. It is a fact of significance that none of the other tanneries appeared as complaining parties against the existing rates.

Witness Fonville, who is engaged in the manufacture of washboards at Raleigh, N. C., testified that he operates a plant which has a capacity of 100 dozen washboards a day and that he is in competition with other manufacturers of wash-boards located at Saginaw, Michigan, Columbus, Ohio, and Memphis, Tenn. (R. 1545). For the purpose of showing the effect of the existing rates upon his business, the witness presented Exhibit 79, listing the shipments of washboards made in the month of September, 1941. There were about 25 less-carload shipments with an aggregate weight of 13,305 pounds, for which the total transportation charge was only $158.69. Had the official classification basis been applied, the total charge, according to the exhibit, would have been $112.92, or a difference of but $45.77 (R. 1543-44). To what extent such an insignificant difference in rates on a month's business could be a serious handicap it is difficult to see. Of his two chief competitors, one is the National Washboard Company, which has its main plant at Saginaw, Michigan, with a branch factory at Memphis, Tenn. (R. 1541). Obviously, therefore, all of the competition encountered by the witness' concern does not come from official territory. Moreover, the fact that one of his competitors has itself established a branch factory in the South would seem to indicate that the rates in the South are not a barrier to business (R. 1542). Indeed, the business of this witness has increased substantially in the past few months (R. 1543).

Witness Charles F. Cates, appearing for Charles F. Cates & Sons, testified that his company had a plant at Faison, N. C. and was engaged in the production and marketing of cucumber pickles. Obviously, the freight

rates are not a barrier to doing business in the North since over 25 per cent of this company's output of brine and salt stock moves to northern territory (Ex. 78). The finished goods are shipped to points in the South and also to the North (R. 1536). The rates applicable to less carload shipments of pickles in the South have been established on a reduced basis to meet truck competition and are relatively lower than the rates applying within official territory. It appears that the witness' real concern is lest the present rates applicable within the South on less-carload shipments may be increased to the normal basis. He said:

> "We do not want to be faced continually by the threat of an increase back up to the normal level which is substantially higher than the northern rates. That threat is especially serious at this time when the truck competitive situation is diminishing" (R. 1537).

Witness O. G. Edwards testified on behalf of the Perfection Mattress and Spring Company, which has a plant at Birmingham, Ala., and is engaged in the manufacture and distribution of household furniture. The witness made a general statement that his company could not ship its products into official territory because of freight rates (R. 1602-07), but on cross examination he admitted that he had never complained to the railroads about his rates to the North and that he had never filed a complaint with the Interstate Commerce Commission (R. 1609). Further cross examination developed that the prices for bedroom suites ranged from $40 to $150, that they varied in weight from 250 to 500 pounds, and that the margin of profit ranged from 15 to 20 per cent (R. 1612). The difference

in levels between the rates from the South to the North and those in official territory as indicated by Exhibit 84, would be substantially less than the smallest margin that can be produced by the most unfavorable combination of these figures. The business of this company far from being restricted has increased quite substantially in the last ten years (R. 1604, 08, 09). And when all is said and done, furniture does not move at class rates in the restricted meaning of the term but on exceptions to the classification.

Witness R. T. Settles appeared on behalf of the Chattanooga Glass Company, which has a plant at Chattanooga, Tenn. and is engaged in the manufacture of glass bottles. The sum and substance of this witness' testimony was that his company is in competition with manufacturers of similar products located in Illinois and West Virginia and that its rates are relatively higher than the rates applicable within northern territory. It appears that approximately 25 per cent of its output is sold in the North. There is not a single word in this witness' direct testimony to the effect that the existing rates obstruct the sale of his company's products in official territory (R. 1614-19).

Witness Clarence Ford appeared on behalf of the Tom Huston Peanut Company, which has a plant at Columbus, Ga. (R. 2569). The rates applicable to the commodities shipped by this company are 57 per cent of first-class published as exceptions to the classifications. Since it was ruled at the hearing that the rates based on exceptions to the classifications are not in issue in these proceedings, the testimony as to these rates was admitted only in so far as it bore upon the question of classification (R. 2570-74). It is, therefore,

clear, that this witness' testimony is no proof that the existing class rates are unlawful in any way.

Witness Charles Gilsten testified on behalf of the Monarch Wine Company, which operates a plant at Atlanta, Ga. This company is engaged in the manufacture of fruit wines (R. 2960-61). Prior to the discontinuance of steamship service to New York, this company shipped its fruits via steamship to New York and reshipped the wine from that point to eastern territories. After the discontinuance of the water services, witness' company was unable to ship its products by rail to trunk line territory because of the freight rates (R. 2962). Within the North the wine moves under exceptions to the classification. The witness desires that rates from the South be made on the same relative level.

A surprise shipper witness (surprise to counsel for the Southern Governors, who called him) was R. G. Le Tourneau. He has three companies engaged in manufacturing grading machinery and lifting and hoisting specialty machinery (R. 1528). His first plant was at Peoria, Illinois. Other plants were established later in Tirgalo, Ga., and Vicksburg, Miss., which are engaged in manufacturing the same products as are manufactured at Peoria, Ill. (R. 1529). The witness, instead of voicing any complaint against the freight rates from the South, testified that he established these plants in the South because of the many advantages in that territory, among which is that steel can be purchased cheaper in the South than anywhere else, that living costs are lower because of the climate and that abundant labor is available. The witness was asked "What have you to say with reference to the freight

rate disadvantages you suffer in Georgia". He stated that he knew little about the technicalities of freight rates and that he shipped his products all over the world (R. 1530-32).

Such was the testimony of the few individual shipper witnesses of the South who testified in support of the demand of the Southern Governors for a revision of the class rate structure—a paltry, feeble representation of actual shippers as compared with the "number of different kinds of manufacturing—now so large that a break down by kind and state is impossible owing to lack of space" (Ex. 219, p. 7). Certainly in the light of such testimony the Commission cannot properly find that the class rates are an insuperable burden to the growth of southern industry or that they impede the free movement of traffic or are unlawful.

C. *The testimony of important Southern shippers who oppose the rate revision sought by the Southern Governors effectively negatives the claim that the present rate structure is detrimental to the South.*

In marked contrast to the unimportance as shippers and the weakness of the testimony of the witnesses just referred to, who were evidently all that the Southern Governors could produce, were the southern opponents of the Governors' efforts.

Witness A. J. Ribe is a well known traffic consultant located at Birmingham, Alabama. He is employed by sixty shippers as their traffic manager or consultant. These sixty shippers are either small or only moderately large. Mr. Ribe appeared in support of the present southern rate structure except that he took no position as to the issue relating to the Florida arbi-

traries (R. 3026-27). He testified at considerable length (R. 3024-74; 3089-3104) and presented two elaborate exhibits (Exs. 152 and 153), which contained, among other things, statistics relating to traffic balances of freight moving to and from the South and also numerous rate comparisons.

Mr. Ribe expressed the view that any revision of the class rate structure applying within and to and from the South would be definitely harmful to southern industry and analyzed the matter in great detail as it affected numerous industries (R. 3024-3082).

Witness C. E. Widell, appearing on behalf of the Southern States Industrial Council, a voluntary nonprofit organization, and also for various Tennessee and other Southern industrial interests engaged in producing both high and low grade manufactured products, opposed any revision of the existing class rate structure in the South and expressed the view that the revision sought by the Southern Governors would work serious harm upon southern industry (R. 3105 *et seq.*).

Witness Hanes, Manager of the Traffic Department of the Louisville Board of Trade, Louisville, Kentucky, testified that the shippers of Louisville have no complaint against the existing rate structure and expressed the hope that it would not be revised (R. 2345-50).

Witness Glenn, Traffic Manager of the Tennessee Products Corporation, which produces pig iron and about twelve other commodities and which also owns and operates numerous stores in its factory towns, appeared in opposition to any revision of the existing rate structure and expressed the view that the present rates have not retarded the industrial development of the South (R. 3148-53).

Witness Gossage, representing shippers of brick, tile, sand, gravel, coal, building materials, mill supplies and other traffic, who ship over 2,200 carloads annually, testified that the existing rate structure is responsive to the needs of southern industry and expressed the view that the existing class rate structure should not be revised, particularly because of the effect that such a revision would have upon the rates applicable to low-grade products (R. 3082-3089).

D. *The record absolutely disproves any claim that goods of Southern manufacture are prevented by the existing freight rates from being sold in Northern markets.*

The claim, which should now appear to be well demolished, that the freight rates have restricted the industrial growth of the South is another way of asserting that the higher level of the class rates from the South to the North than of the class rates within the North has prevented the shipment into the North of goods of southern manufacture. The South as represented by the Southern Governors' Committee, does not expect to support its own industries. It wants to grow by selling its goods in the North (presumably to the men who will have been thrown out of work when the industries in which they were employed shall have moved to the South). Therefore, the outcry against the freight rates rests upon the premise that under the present rate structure southern goods cannot and do not reach northern markets. But in this respect again the facts of record disprove the claim that the freight rates restrict southern industry.

There could be no better evidence that goods of southern manufacture are *not* prevented by the rate structure from competing in northern markets than proof that they are actually being sold there. And such proof was presented.

First of all, Witness Russell of the New York State Division of Commerce identified Exhibit 156 which bears directly on this point. The exhibit first shows purchases made by the State of New York itself on competitive bidding, where the contract went to southern manufacturers in competition with northern producers. Then it gives a list developed by an investigation conducted by the Division of Commerce of instances where manufacturers of New York State encounter competition from southern manufacturers in selling goods in the North. And finally the exhibit tells the sad story of the once great furniture industry of Jamestown, N. Y., which has dwindled almost to nothingness, while the furniture industry of the South has grown great, and whose few survivors now encounter the competition of furniture manufacturers of North Carolina and other southern states.

Then there were witnesses Mace, of the Commerce and Industry Association of New York (R. 3201-7, Ex. 157), Burton of the Rochester, N. Y. Chamber of Commerce (R. 3383-3394, Ex. 163), Williams of the Chamber of Commerce and Board of Trade of Philadelphia (R. 3208-3209, Ex. 158) and Hamill of the Baltimore Association of Commerce and the Maryland Development Bureau (R. 3379-3382, Ex. 162).

Each of these witnesses testified that he had made an investigation in one or more important retail stores in his community to ascertain whether goods of south-

ern manufacture were there on display and sale and in the exhibit prepared by him listed such southern goods as were there found. Every exhibit, of course, included textiles or articles made from textiles, but there were also found on sale in all of these northern stores goods of southern production representing almost every kind of finished manufactured article that one could expect to purchase in a department store. Thus, to mention only a few, there were:

EXHIBIT 157.

Earthenware	from	Camden, Ark.
Toys	"	Buford, Ga.
Books	"	Atlanta, Ga.
Toys	"	Asheville, N. C.
Mirrors	"	Biltmore, N. C.
Furniture	"	Conover, N. C.
Boys Clothing	"	Greensboro, N. C.
Chairs and other furniture	"	High Point, N. C.
Fireplace fixtures	"	Chattanooga, Tenn.
Cologne	"	Aiken, S. C.
Casseroles	"	Steeds, N. C.
Nickelware	"	Memphis, Tenn.
Shoes	"	Humbolt, Tenn.
Gas Ranges	"	Athens, Tenn.

EXHIBIT 158.

Baskets	from	Atlanta, Ga.
Candy	"	Atlanta, Ga.
Crayons	"	Nashville, Tenn.
Dishes	"	Atlanta, Ga.
Electrical Supplies	"	Atlanta, Ga.
Paper Novelties	"	Atlanta, Ga.
Play houses	"	Chattanooga, Tenn.
Silverware	"	Atlanta, Ga.
Wool Coats	"	Rutherford, Tenn.

EXHIBIT 162.

Bird Decoys	from	Pascagoula, Miss.
Bond paper	"	Canton, N. C.
Drugs and Medicines	"	Various Southern States
Dry Cell Batteries	"	Whiteville, N. C.
Gloves	"	Knoxville, Tenn.
Lead Pencils	"	Atlanta, Ga.
Automobile Specialties	"	Charlotte, N. C.
Radio Cabinets	"	Nashville, Tenn.
Residential Lighting Fixtures	"	Chattanooga, Tenn.
Slippers	"	Waynesville, N. C.
Step Ladders	"	Nashville, Tenn.
Stoves	"	Cleveland, Tenn., and Rome, Ga.
Wrapping Paper	"	Several Southern Origins
Wrapping Twine	"	Lawndale, N. C.

EXHIBIT 163.

Archery Equipment	from	Pine Bluff, Ark.
Washboards	"	Raleigh, N. C.
Glass Tumblers	"	Sapulpa, Okla.
Canned Fruits	"	Various points in Florida, Georgia and Texas.

Witness Wolford testified that during the years from 1939 to 1941, inclusive, 67 new industries were located on the Seaboard Railway, that all these industries but one were engaged in the manufacture of finished products of various kinds, and that about forty of them ship their products into official territory (R. 4785-86).

Witness Morris testified to a study made by the Louisville and Nashville Railroad of traffic for the month of September 1940 moving from points on its lines in the South to official territory. This study showed that, excluding coal, 33 per cent of the carload traffic consisted of the movement of manufactured and

miscellaneous commodities in Group 5 of the Commission's Commodity Classifications (R. 4013-15).

The study presented by Dr. Aitchison, based on a traffic test for May 17, 1942, shows that, excluding coal, 33.9 per cent of the carload traffic from the South to official territory consisted of the movement of commodities classified as manufactured and miscellaneous commodities in Group 5 (R. 4013-15).

Certainly this evidence disproves two of the basic claims advanced by the South: (1) their contention that under the existing freight rates, goods of southern manufacture cannot be marketed in the North; and (2) their plea that the freight rate structure has limited the industrial development of the South to the production of low-grade or semi-processed articles.

E. ***The claim that the class rate structure and the difference in the class rate levels between the South and official territory have prevented the industrial growth of the South and have favored and stimulated the growth of industry in the North is disproved by the movement of manufacturing industries from the North to the South.***

To those of the North familiar with industrial trends, who have seen the shift of industries from their States to southern localities, the claim of the South that the freight rate structure has discriminated against the South and has induced the industrial development of the North at the expense of the South simply does not ring true.

The Commission, of course, well knows and witnesses Ford and Ferguson testified at the hearings in this proceeding about the migration of the textile industry

from New England to the South, leaving New England communities with large portions of their populations without employment (R. 3171-3186). Witness Russell, of the Division of Commerce of the State of New York, testified that New York had likewise been the victim of industrial migration to the South. Like New England, New York has lost many of its textile industries to the South. The stove manufacturing industry was at one time an important industry in the State but it has greatly diminished and many concerns which were formerly engaged in manufacturing stoves have gone out of existence while the stove industry of the South has grown. Other industries, such as the pipe industry, and the manufacture of gray cast iron products, which use pig iron, have suffered materially from competition of producers elsewhere. (This is an important consideration in view of the lower freight rates on pig iron in the South than in official territory.) Jamestown, N. Y., was formerly a very large center for the manufacture of furniture, but during the past twenty years while the furniture industry of the South has been growing, that of Jamestown has been greatly reduced. Twenty-two furniture manufacturing concerns in the Jamestown area have gone out of business during the past twenty years. The products of Jamestown furniture companies are sold principally in the northeastern part of the United States and the survivors of the industry who are still in business in Jamestown now meet competition of furniture manufacturers at Drexel, Morgantown, Lenoir, Hickory, Winston-Salem, and Thomasville, N. C. (R. 3190-3201, 4673, Ex. 156).

In addition to such testimony showing the migration of industries from the North to the South, notwith-

standing the differences in class rate levels, there was testimony of Witness Bauman for New Jersey explaining the considerations which have led manufacturing concerns to locate in New Jersey, these considerations not including the differences in the class rate levels (R. 3345-78; Ex. 161).

Such evidence, coupled with the evidence discussed in the previous subheadings under this point, certainly requires the conclusion that the industrial development of the South has not been restricted or retarded by the freight rates; that neither the difference in the levels of the class rates nor anything else has prevented the location of manufacturing industries in the South or prevented the products of southern manufacture from being sold freely in the North or unduly preferred the North.

POINT V

The economic theories advanced in support of the demand for a revision of the class rate structure are invalid in other respects.

In the two previous points we have seen that there is no factual basis for the underlying assumptions on which rests the demand of the South and Southwest for rate parity, and upon which the witnesses whom they called to give a semblance of an economic argument for the demand predicated their theories. The South has not been prevented by the rate structure from developing industrially—it *has* developed; and, besides, the rates on outbound manufactured goods do not ordinarily determine the location of industrial plants. Inevitably, economic theories based upon false premises are themselves unsound. Without attempting to review in detail the testimony of those witnesses whom

the South and Southwest called to expound their economic ideas, a few other features can be cited which certainly raise doubt as to the soundness and importance of the theories advanced by them.

The first and principal witness of this sort was A. D. Spottswood, an employee of the Tennessee Valley Authority. He was called to the stand and examined by counsel for the T. V. A.

At the hearing at Indianapolis, this counsel, on being asked by the presiding Commissioner to state the position of the Tennessee Valley Authority in the case, said that the T. V. A. had conducted

> "a survey of the effect of the present class rate structures upon the economy of the Tennessee Valley and adjoining areas"

and that

> "the surveys indicate that the present freight rate structures being higher in the South than in Official Territory are retarding the economic development of the Tennessee Valley and adjoining areas in the South and West, and that this situation should be corrected" (R. 438).

Later, however, perhaps having been reminded that there might be some impropriety in a Federal agency taking sides in this proceeding, counsel said:

> "The Tennessee Valley Authority as a Government agency has no interest in these proceedings in the ordinary sense of the term. * * * We are appearing here more or less as a friend of the Court for the purpose of presenting the results of those studies for whatever value they may be to the Commission" (R. 1358).

However, any attempt to surround Mr. Spottswood's testimony with an aura of either governmental or aca-

demic impartiality was destroyed by the witness himself who admitted that he had never testified in a proceeding when the opinions expressed by him would not benefit the T. V. A. (R. 1435).

Moreover, the fairness of Mr. Spottswood's approach may be illustrated by the following statement made by him:

> "Nor does Official territory have any monopoly of the material and energy resources. Here are just a few figures for purposes of illustration. . . . The South and West have nearly 95 percent of the country's available iron ore" (R. 1390).

He went on to say:

> "My point is . . . that we have resources great enough to support a great deal more industry than the country now has, and that a much larger proportion of new industry should go into the South and West than has been true of industry established up to now" (R. 1391).

Plainly this was an attempt to have this Commission believe that official territory lacks iron ore and that from the standpoint of industrial development and of rate-making the Commission should proceed on the assumption that this "95 percent of the country's available iron ore" constitutes a part of the resources and traffic of the South. The Commission, of course, will not be misled by such a patent misrepresentation since it knows that most of this 95 per cent consists of the ore from the Missabe Range which moves by water to the Lake ports and to a great extent becomes part of the very large volume of low-cost freight of the official territory rail lines. None of this Missabe ore is transported within southern territory.

Having thus demonstrated his complete unfairness and his biased approach, Mr. Spottswood asked the Commission to accept the four theses of his argument. These were (1) that there is an undue "degree of specialization as among the several regions or rate territories" which "establishes a relationship between Official Territory and the South and West which is substantially that of mother country and colonies"; (2) that such "regional specializations" prevent the achievement of "full employment, full production and maximum national income"; (3) that the disparity of class-rate levels tends to perpetuate regional specializations and to keep the South and West tied to "overdependence on raw materials production"; and (4) that a "piecemeal adjustment of class rates will not adequately serve the needs of the nation. What is needed is a comprehensive readjustment . . . " (R. 1361, 1362).

Expanding these theses, Mr. Spottswood expressly or by implication advanced other propositions such as: that the lower per capita income in the South than in the North is due to an economy of agriculture, low-grade manufactures and semi-processed operations in the South as contrasted with an economy in the North based on the manufacture of highly finished goods; that the freight rates are the cause of these differences in the economies of the two territories and that the territorial differences in the freight rates have induced the exportation from the South of raw materials and semi-processed goods into the markets of the North for final manufacture; that it is vital to the development of manufacturing in the South to be able to tap the purchasing power of the North by selling goods in north-

ern markets, and that the margins of profit from various products do not permit this under the existing freight rates.

The evidence reviewed under the foregoing Point IV certainly eliminates most of the factual assumptions upon which Mr. Spottswood's theories rest. Moreover, his cross examination should convince the Commission that little weight should be given to his opinions or to his Exhibit 76. A few examples from Exhibit 76 itself will serve further to illustrate the generally fallacious character of Mr. Spottswood's reasoning.

Thus, whereas Mr. Spottswood asserts that a manufacturing economy is necessary to produce increased per capita incomes, page 7 of his Exhibit 76 shows that the highest per capita income in 1940 was in the District of Columbia, which is certainly not a manufacturing region; it shows that Florida, which has the least manufacturing of the southern states, had the highest per capita income of any of them. On cross examination Mr. Spottswood had to admit that some of the northern states for which higher incomes are shown are states where there are large proportions of so-called service industries and professions rather than manufacturing (R. 1443).

As for the effect of the freight rate structure in restricting the development of the South, this same page of Exhibit 76 shows that the average income per person employed in official territory was lower in 1940 than in 1929; whereas in every southern state except Kentucky (which is the nearest to official territory and is therefore least affected by freight rate differences) the incomes per person employed were higher in 1940 than in 1929.

How superficial were his studies and his generalities as to the relative economic conditions of the South and the North and the effect of freight rates thereon, is demonstrated by his admission that he was not familiar with the freight rates on raw materials within the South and did not know that they were generally lower than in the North (R. 1454). We quote:

> "Q. Well, do you think that an equality of economic opportunity will be produced by dealing only with the class rates and not by bringing about an equality of the rates on the raw materials?
>
> * * *
>
> A. Your question had to do with the whole rate structure, as I understand it, and not with the class rates. My remarks, or my testimony deals with the inhibiting effects of the class rate structure and the opportunity that is lacking in the South because of these class rate structures, to develop a diversified manufacturing.
>
> Q. You have not given any attention in your general unbiased economic study to the freight rates on raw materials as they may affect the competitive ability of industries in different parts of the country, is that correct? A. I have not given a comprehensive study of the rates on raw materials" (R. 1454-55).

If there were any merit in Mr. Spottswood's theory that sound economy requires the manufacture of raw materials into the ultimate finished products within the territory where the raw materials are produced and that the present rate structure is to be condemned because it discourages this, then the complaints of several of the very few representatives of individual industries of the South who came forward with testimony are completely nullified. For example, one of

these was Witness Edwards whose company manufactures springs and mattresses. It obtains 34 per cent of its raw materials in the North. On Mr. Spottswood's theory this is economically unsound, even if the springs and mattresses are to be sold within the South. It is doubly so when, as is the fact, a large part of the output goes back to the market of the North.

Mr. Spottswood in one breath disavowed any knowledge of freight rates and in the next attributed to the existing class rate structures the perpetuation of the regional specialization which he attacked but did not prove (R. 1361). He included in his Exhibit 76 charts and tables of statistics as to population, employment and other economic facts. But like the tables of other economic witnesses for the South these statistics were for the years 1939 and 1940 alone and therefore afforded no indication as to whether the South was on the upgrade, downgrade or level so far as industrial development is concerned.

The witness stated that future industry "could well be more located in the South than it has been in the past" (R. 1436). But on being asked what he considered "the proper proportion of new industry which should locate in the South", he very properly agreed that no one could answer the question. This naturally led to the further inquiry as to how he could say "that the South is not now getting its proper proportion of new industry", to which the witness replied, "I do not think I said they were not getting their proper proportion" (R. 1437). It would seem that this pretty effectively destroys all of Mr. Spottswood's argument.

In an effort to bolster his testimony that the industry of the South and West consists principally of the production and manufacture of agricultural products, raw materials and partially manufactured goods, Mr. Spottswood included in his Exhibit 76 what purports to be an analysis of interregional traffic balances for the year 1940 of the various territories indicated. This analysis was claimed to show that as to manufactured goods a greater volume was terminated than originated within the South and West and that as to agricultural products, raw materials and low-grade goods a greater volume originated within these territories than was terminated. The opposite situation was shown as to official territory, namely, that the volume of manufactured goods originated in that territory was in excess of the volume terminated, while the volume of agricultural products, raw materials and low grade products terminated exceeded the volume originated. From this state of facts the Commission is asked to draw the conclusion that the inter-regional traffic between these territories consists of an exchange of the manufactured goods of official territory for the non-manufactured goods of the South and the West (R. 1364-70; Ex. 76, tables 3, 4). Table 4 of this exhibit, however, certainly dispels any idea that the freight rate structure prevents the South from marketing its manufactured goods in other territories for it shows that in 1940 the South had a net outbound balance of goods in the manufactures and miscellaneous group of $624,569,000 and that this figure exceeded the net outbound total of all other commodity groups (the computation of values are open to question but it seems hardly worth while here to discuss that detail).

A much more satisfactory analysis of the flow of traffic to and from southern territory is contained in

the exhibits prepared by Witness Ribe (Exs. 152, 153, 198, 199). These exhibits show that the outbound balance from the South is not as unfavorable as depicted by Witness Spottswood. They indicate further that the inbound flow of traffic to the South does not consist entirely of manufactured products from official territory which are exchanged for the raw materials of the South. A large part of the movement into the South consists of agricultural products and raw materials which are either directly consumed or are used in the South for the production of manufactured products (R. 3029-3046). Mr. Ribe's exhibits, which show the trend, something which Mr. Spottswood's exhibit does not do, also indicate that the development in the shipment of manufactures outbound from the South between the years 1929 and 1941 has been favorable to the South (Ex. 198).

But whatever be the correct figures as to relative inbound and outbound movements for the several territories, what do they prove? The North cannot buy unless it sells. Neither can the South. How can this Commission decide what is the correct ratio of inbound to outbound movement? Mr. Spottswood certainly does not tell, and if he did his opinion would be of doubtful value.

In order to heighten the color of the economic picture that he painted for the South, Witness Spottswood referred to the "tragic" effects of the South's long time dependence on cotton, corn and tobacco and stated that a diversity of industrial production is needed in almost the same degree as diversification in agriculture (R. 1376). So far as this statement was intended to imply that the present agricultural production in the South consists largely of tobacco, cotton and corn, it is completely contradicted by the fact that in 1939 the tonnage of cotton originated in the South was only 1,087,942 tons, while that of fresh fruits and vegetables was 2,171,182 tons. The combined income from tobacco and cotton constituted only about one-half of the income derived by the South from farm crops of all kinds (R. 4022-24).

The complaint of the South against the freight rates is not that they prevent the sale of southern products in the South. The burden of Mr. Spottswood's argument, as of that of other witnesses, is that in order to stimulate the development of manufacturing industries in the South it must be made easier for them to sell their products in the North. The South's economic case is, therefore, dependent on the existence of purchasing power in the North. Accordingly, Mr. Spottswood was forced to agree that the South would not benefit if the purchasing power of the North were diminished (R. 1449). He agreed that it would be bad for the South to have unemployment created in the North (R. 1450). For this reason he was compelled further to state that he did not advocate anything which would cause a shift of any industry now located in the North to the South (R. 1436, 1449).

On page 15 of his Exhibit 76, Mr. Spottswood set forth a list of commodities and rates in a table designed to show what he called the "burden" of absorbed freight charges on profits of southern and western manufacturers in competition with official territory manufacturers. It should be borne in mind that the plea of Mr. Spottswood is that the freight rate structure prevents the industries in the South

from shipping highly processed articles, of which he gave typewriters as one of the typical examples he had in mind. In this connection, however, the following on cross examination is pertinent:

> "Q. (By Mr. McCollester): Is is not a fact that differences in freight rates are of less importance in determining ability to sell in the case of high-grade manufactured goods selling at high prices, than in the case of goods where the margin between production cost and sales price is very low? A. Yes, sir.
>
> Q. The commodities, the rates on which you are concerned with here, are the high-grade manufactured products? A. Yes, sir" (R. 1458-59).

Page 15 of Exhibit 76 shows that the difference in freight rates on typewriters in favor of a Syracuse, N. Y., producer as compared with a Memphis manufacturer in shipping into Elkhart is the large sum of 12 cents a typewriter. Surely the Commission will not believe that this difference in freight charges can be an impediment which would prevent the development of an industry to manufacture typewriters in the South. Furthermore, the figures represent the net profits of the companies after payment of all expenses, including freight (R. 1460). One example cited by the witness on page 16 of the exhibit is that of a concern in Laurel, Mississippi, producing sweet potato starch. Far from the freight rates being an impediment to the development of this business, the exhibit shows that the greatest volume of shipments made by this concern moved to Lawrence, Mass., which was the next most distant destination to which any shipments were made.

Having testified that in his opinion it was in the interest of the country as a whole that instead of having raw materials and semi-manufactured products transported to manufacturing points near the consuming markets, manufacturing should take place in the South and the finished goods should be transported from the South (R. 1447), Mr. Spottswood was asked whether this object could not be better obtained by raising the outbound rates on raw materials and semi-finished products from the South, to which the witness replied, "That would be a rather extreme measure * * * I am not advocating anything that would make drastic changes."

This in turn led to the query whether the witness did not advocate "a drastic change in the rate structure", to which he replied, "I do not advocate it to be done over night" (R. 1447). When asked how the rate structure could be changed by order of the Commission if not "all at once", the witness replied:

> "I do not want my statement to mean that the thing should be done anyway, except as the Commission can work it out. I assume that the Commission will take into consideration the effect that a sudden change would have on the economy of the nation" (R. 1448).

We assume so, too. But this answer would seem to nullify most of what Mr. Spottswood argued for so boldly in his direct statement, especially his statement previously quoted, that

> "piecemeal adjustment of class-rates will not adequately serve the needs of the nation. What is needed is a comprehensive readjustment . . ." (R. 1362).

Certainly little weight can be given to the opinion of such a superficial, vacillating and self-contradictory witness.

We submit that even if the Commission had the power to require a revision of the class rates for the purpose of revising the industrial map of the country in accordance with someone's economic theories, the foregoing is sufficient to indicate that Mr. Spottswood's economic theories are unsound and without factual basis.

Two other witnesses were called on behalf of the South and Southwest, to present "economic" testimony. They, too, voiced the theory that the difference in class rate levels is responsible for retarding the industrial development of the South in the field of high class manufacture and tends to promote the exportation of the resources of the South to the North in the form of raw materials or semi-processed goods instead of finished manufactured articles.

The first of these witnesses was Professor Eutsler, of the faculty of the University of Florida. He testified that he had been retained to make "special economic studies of the relation between the development of the manufacture of high grade commodities in Florida and freight rate structures and the influence of freight rates upon the area of distribution of Florida products" (R. 1928). The first product discussed by him was palmetto fiber. He described in great detail the harvesting and manufacturing of palmetto fiber, although what these details have to do with the case it is hard to see. Of course this article cannot be produced in the North. The connection was supposed to be that palmetto fiber is used in the manufacture of brushes and that these compete with cleaning brushes manufactured in the North. One of the principal markets is Chicago and one of the northern manufacturers

of cleaning brushes is located right in Chicago. Professor Eutsler agreed that parity of rate levels would not aid the Florida producer in selling in the Chicago market (R. 1959). He testified next that another manufacturer was in New York, but again agreed that rate parity produced by an increase in the official level would not improve the position of the Florida manufacturer in shipping into New York nor would it aid him in shipping into Chicago in competition with the New York manufacturer (R. 1961).

One of the other Florida products selected for the study was crystallized citrus candies. Citrus fruit, likewise, is not grown in the North. Professor Eutsler attempted to relate this commodity to the present case by stating that citrus candies compete with high grade candies manufactured in the North (R. 1954), and ventured the opinion that a reduction of the freight rates would stimulate sales in the North (R. 1956). However, on cross examination he admitted that he did not know who the manufacturers of high grade candies in the North were or where they were located (R. 1963).

These are samples of the sort of economic testimony upon which the South's case is predicated.

The third witness called by the South on the economic aspects of the case was Professor Frederick of the University of Texas. Professor Frederick identified Exhibit 104, prepared by him, which was claimed to be based upon a study of the inbound and outbound shipments of typical selected industries of the Southwest to establish the discriminatory effect of the difference in class rate levels. He testified that the exhibit was designed to emphasize "the fact that for some reason industry has not developed in this area (Texas)" (R.

2106), an assertion which is contradicted by the statistics of record and by the claims of the spokesmen for the South's prosperity, whose record of the marvelous industrial growth of the South is set forth in Exhibits 160 and 219. Professor Frederick indulged in the usual broad and unsupported generalities of the southern publicists, such as that "The handicap of unequal freight rates narrows markets for Southern and Southwestern manufactured products" and "The handicap of inequality of freight rates might perhaps be lessened if the Southwest could prosper without greater industrial development than they now have, but we cannot. As freight rate inequalities prevent this increase in industrial development, they must be removed" (R. 2107). It is, of course, easy to use the word "handicap" and if repeated with sufficient frequency a witness may hypnotize himself into believing it. But the implication that the Southwest does not now prosper, naturally provoked the question on cross examination whether Houston and Dallas were not now "extremely prosperous", to which the witness of course had to answer in the affirmative (R. 2119).

Professor Frederick's exhibit contains charts based upon the census of manufactures designed to show graphically the number of salaried employees, wages and value of products in the several territories. These charts, however, prove nothing in so far as the present case is concerned because they are based only on figures for one year, 1939, and therefore do not tell whether the Southwest is growing industrially or not or whether it is growing more or less rapidly than the North. This information is supplied by Witness Robinson's Exhibit No. 159, which shows that, generally

speaking, although the Southwest is not progressing as favorably as the South, it is holding its own with official territory, which also is behind the South.

Again bearing in mind that Witness Spottswood and some of the other spokesmen urged that the freight rate structure should be such as to induce the development of industries in the South that would use the raw materials of the South and would ship the products made therefrom to the North and that the fault of the present rate structure is that it does not encourage the attainment of this result, a strange showing is presented by that portion of Dr. Frederick's Exhibit 104, which deals with the study that he made of a few selected, and supposedly typical, southwestern industries. One of these industries was a cotton mill concern. It appears that in 1941, 54.1 per cent of the inbound shipments to this concern came from official territory and that it shipped out 34.1 per cent of its product to that territory. Another concern manufacturing toilet preparations, ink and about 180 items acquired 84.6 per cent of its inbound materials from official territory. The next concern obtained 53 per cent of its total inbound shipments from official territory. Obviously, these were not cases where the freight rate structure prevented the manufacture of raw materials produced in the South.

We earnestly ask the Commission to scrutinize carefully the exhibits and statistical material presented by these southern economists and by other general witnesses for the South and to weigh critically the broad general statements which were poured into the record concerning the iniquities of the present rate structure. We ask that these generalities be compared with what

the statistical and factual evidence in the record actually shows. For we submit that however often the statement may be repeated that the rate disparities between the several territories have prevented the development of manufacturing industries in the South or the marketing of southern products in the North and however loudly these claims of injury have been proclaimed, they do not find support in the proof in this proceeding.

It would be possible to continue at length to analyze the conomic theories propounded by Mr. Spottswood and his brethren from the South and to point out the fallacies therein because we submit that they *are* largely fallacious. A study of their cross examinations will, to a large extent, indicate that this is so. These fallacies have been effectively demonstrated by the testimony of Dr. Duncan and Professor Van Metre. Therefore, this brief will not be extended further on this subject except to suggest one underlying error in the whole theory of the South's economic philosophy.

The South's case is aimed at increasing the per capita income of the South by attracting to the South an even greater proportion of manufacturing industries than it has gained in the past few years. But it is nowhere suggested that this increased manufacture should produce goods for the consumption of the South. The desire is to induce the manufacture of goods in the South but to sell those goods in the North in order to tap the supposed purchasing power of the North. But here lies the fallacy, because on the southern theory, if the North has purchasing power it is due to its greater

industrialization and hence, if industry should be induced to shift from the North to the South, the purchasing power of the North would diminish and the South would have defeated its own ends by destroying the market it aimed to reach. This is, indeed, what has actually happened in New England and New York when the textile industry moved to the South, because with the former workers in the textile mills of New Bedford, Fall River and Utica thrown out of employment, not only could they not buy the textiles which they themselves formerly made and which were later produced in the South, but they ceased to have purchasing power to buy the palmetto fiber brushes or crystallized citrus candy produced in Florida.

Recognition of this ultimate fallacy in the southern argument has led some of the witnesses, such as Spottswood and Eutsler, to testify on cross examination that they do not seek to induce the movement of any *existing* industry now located in the North from the North to the South. What they claim is that there should be a rate structure which will cause *new* industries which may develop after the war to choose a southern rather than a northern location. Obviously, however, it is impossible to prescribe one scale of freight rates for industries now in existence, and another for industries which may come into being hereafter. If a rate structure be so designed as to make it profitable for future industries to locate in the South rather than in the North such a freight rate structure will make it difficult or less profitable for industries now in the North to

remain there. Moreover, if the Southern Governors accept these statements of witnesses whom they have called to their aid, that they do not seek the dislocation of any existing industries, then it is impossible to see how the Commission can find that for shippers who now exist the present freight rate structure is unlawful.

POINT VI

If the Commission could prescribe rates for the purpose of influencing the location of manufacturing industries, it should not ignore the disastrous effect of a shift in industry from the North to the South upon the communities and population of the North.

The Southern Governors and their theorists, in stressing their desire to increase industrial employment in the South have endeavored to create an impression of economic justification for their demand by advancing the claim that the country as a whole will benefit thereby. But since their whole effort is to induce industries to locate in the South rather than in the North, the Commission, whose jurisdiction, if it has any in this regard, extends throughout the country and which is not charged with either the power or the duty to promote the welfare of one section at the expense of another, cannot ignore the effect which a shift in industry from the North to the South would have upon the North.

We have just referred to the evidence as to the unemployment and economic demoralization created in various New England communities when the textile industry migrated to the South. It is certainly open to question whether the national economy as a whole

was benefited when southern workers were attracted from the farms to the cotton mills and whole communities in New England—and the same was true in New York State—were deprived of their means of livelihood and did not have farm employment to which to turn. Governor Dewey of New York in his statement submitted to the Commission stressed the fact that, despite the war boom, unemployment is a serious problem in New York State and that this affects the entire nation since New York embraces over 10 per cent of the nation's population and the national government depends upon New York State for 20 per cent of its revenues (R. 4674). It is certainly a serious question whether the national economy would be benefited by increasing unemployment in New York or other northern states by inducing industries to move to the South, even if the Commission had power to adjust rates for this purpose.

Some of the spokesmen for the southern states, when squarely confronted with the question, asserted, as we have previously indicated, that they do not seek a shift to the South of industries already located in the North but that they are looking to the post-war period and desire a rate structure which will induce new industries developed after the war to locate their plants in the South rather than in the North. But here again the problem is by no means onesided.

Governor Dewey points out that the post-war problem is an exceedingly serious one for New York with its huge population and that post-war unemployment may well be a much more serious matter for the northern states than for those in the South. Thus, in the case of New York, Governor Dewey stated that approxi-

mately 1,000,000 factory workers in New York are now engaged in war production, about one out of every thirteen of the population of the state, and that the termination of the war will involve an immediate cessation of employment for a large proportion of these workers unless new employment is found for them. In addition, there will be more than 1,000,000 New Yorkers in the armed services for whom employment must be found when the war is over. Obviously, such employment can only be provided by the restoration of such old industries as have an economic reason for existing in the post-war world and by the development of new peacetime manufacturing industries. Accordingly, Governor Dewey stated (R. 4675):

> "Anything, such as an increase in freight rates, which will make the establishment or reestablishment of manufacturing industries in New York State more difficult, will tend to promote unemployment, create a serious economic and social problem for New York and for the country as a whole and retard the conversion of the country from a war to a peace footing."

The same situation undoubtedly exists in the case of other northern states. These are facts which the Commission cannot ignore if, contrary to our contentions as to its authority, it assumes to revise the freight rates for the purpose of influencing the location of industry.

POINT VII

The rate evidence does not prove that differences in class rate levels are unlawful.

In order to give the appearance that this is really a rate case instead of an economic or political reshuffling of the country's industries and in order to fill in the gaps in the knowledge both of the few shippers who claimed to have a complaint against the rate structure and of the public spokesmen who have inveighed against it, the South called several very competent traffic or rate witnesses. No one can challenge the ability of Witness Hart or of Witness Henderson in the field of rate analysis.

To be sure, Witness Hart obviously left himself open to disqualification when he attempted to enter the realms of history and political economy and to testify that from the very beginning the South has wanted and intended to be a great industrial manufacturing region and that it was only led astray from its original destiny by the evil genius of Eli Whitney in inventing the cotton gin. However, this misadventure of Mr. Hart into a field in which he obviously lacks profound knowledge cannot effect the decision, because the record clearly shows that once the South turned intensively toward industrialization, its industrial growth has gone forward by leaps and bounds and has not been restricted by the freight rates or anything else.

In his own field of rate analysis, Witness Hart has done a voluminous and painstaking task of portraying the rate situation. His Exhibits 88, 89, 90, 149 and 220 contain countless rate studies and comparisons and

while his selections have naturally been dictated on occasions by what he sought to prove and although we cannot in all respects agree with his testimony as to the circumstances of various rate developments, nevertheless on the matter of the rates themselves, his exhibits with some exceptions give on the whole an accurate if not complete picture. The rates exist and there can be no dispute about them. When all is said and done, however, Mr. Hart's masses of figures come down to the single fact that there are different rate structures in the several territories. They show that just as the class rates are not the same, mile for mile, in official territory as in the South, so the commodity rates and the rates on inbound raw materials differ. Mr. Hart's exhibits, therefore, do not prove that the existing rate structure is unlawful; they simply show what it is.

POINT VIII

The record does not justify a finding that the costs of transporting class rate traffic are as high in official territory as in the other territories. Dr. Edwards' cost computations do not constitute proof of such a fact, which is negatived by other statistical evidence.

Even if injury were proved, if it had been established by the evidence that the difference in class rate levels as between the North and the South had restricted the industrial development of the South, and if the economic theories advanced by the South were sound, still the Commission would not be justified in finding the present class rates unlawful or requiring a uniform level of class rates without evidence from a transportation standpoint to support its conclusion.

Therefore, in the last analysis the demand for rate parity must rest upon the claim that there is no material difference in the costs of transporting *class rate freight* in the several territories. In support of such a claim, chief reliance will undoubtedly be placed on the testimony and exhibits of the Commission's witness Dr. Edwards, especially Exhibits Nos. 2, 3, 13, 195, and on the Exhibits 86 and 87 of Witness Saunders. Since the latter were predicated upon Dr. Edwards' work, it follows that if Dr. Edwards' studies do not support the contention that the costs of transporting *class rate traffic* are no higher in the South than in official territory, the only factual transportation premise of the demand for rate parity disappears.

It is submitted that for several reasons the computations of Dr. Edwards constitute no proof as to the relative costs of transporting *class rate traffic* in the North and in the South.

A. ***The results of the computations are averages for all freight over all lines of all railroads in each group. They do not purport to and cannot represent the costs of transporting any particular category of freight, such as class rate traffic, or of transporting freight between any particular points, over any particular lines or within any definite areas.***

It would be superfluous here to attempt a detailed description of the methods employed by Dr. Edwards in making his computations. He will explain them to the Commission himself. His earnestness, integrity and ability are obvious. And he will be the first to recognize the limitations upon the conclusions which

should be drawn from his computations. The fundamental fact is that the final results which he has produced, such as his so-called "cost scales" (Exs. 3, 13, 195), are derived from total figures not only for entire railroad systems but for groups of railroads. They represent apportionments of such totals rather than computations from direct, original cost figures for particular movements. And such apportionments involve many assumptions and acts of judgment. It is inevitable that this should be so.

The railroads do not keep and, in the nature of things, could not keep records of expenses attributable to individual movements of particular commodities. Their maintenance of way accounts, for example, show total expenditures for labor and materials in maintaining a given division, whether the freight moving over it is machinery or coal, whether a particular car is moving fifty miles or five hundred miles, whether it is in a box car or a gondola car. There is no separation on the railroads' books of maintenance of way expenses or of train service expenses as between class rate traffic and commodity rate traffic. Most trains doubtless contain both. Therefore, any computation of costs based upon the carriers' records as they have been kept must represent an attempt to deduce from total figures applicable to all railroad operations the proportions thereof which may be regarded as attributable on some theory to the movement of a particular shipment.

Whether the assumptions required by this method of computation are valid, and then what the averages so computed can prove when the issue is the lawfulness of rate levels on a relatively small portion of the total freight—these are questions which go to the weight to

be given to the so-called "cost" computations for the purposes of this proceeding.

For example, a figure of 11.6 cents is produced as the cost of transporting a net load of 25 tons of freight in a box car for a distance of 300 miles in what Dr. Edwards calls "Eastern territory". (This is not official classification territory for it does not include the Pocahontas lines, the R. F. & P., the lines of the Southern in the official territory portion of Virginia, in Indiana and in Illinois, nor the lines of the M. & O.) The corresponding figure for the South (which is not Southern territory for it includes the results of the R. F. & P. and the lines of the Southern and M. & O. in official territory) is 10.4 cents.* According to Exhibit 2 these figures are supposed to represent the cost of 300 miles of operation in each territory, wherever the haul may be, whatever the nature of the lines or the kind of trains.

Thus the figure for "Eastern" territory must be supposed to be equally representative of the cost of moving that quantity of freight for 300 miles on the New York Central's water level route and of hauling it for 300 miles over the Adirondacks, where the Commission in the *Eastern Class Rate Case* prescribed a higher level of rates because of supposedly higher operating costs. The figure is the same whether the haul is over a branch line or a main line, over a four track, heavy density line or over a streak of rust. It assumes that the cost is the same whether the car is moved in a

* These figures are taken for convenience from table 1 of Exhibit 2 since here "Eastern" and New England are combined. Dr. Edwards in Exhibits 13 and 195 produced different figures. One of the difficulties of discussing all of his exhibits is that they are made up in such a way that it is not possible from them to obtain comparable figures for the same groupings of railroads.

through train or a way freight, whether it is in a heavy tonnage train with a large proportion of coal or in a mixed train with a passenger car on the end. The cost figure for 300 miles is assumed to be the same for transportation between two points on the Pennsylvania with a traffic density in 1939 of 3,376,000 net ton-miles per mile of road and between points on the Pennsylvania-Reading Seashore Line which to support itself had only 290,771 net ton-miles per mile of road. The figure for the South is supposed to be accepted as the cost of moving 25 tons of freight in a box car 300 miles over the line of the Clinchfield, whose heavy coal traffic operates to reduce its average unit costs, as well as for 300 miles over the line of the Seaboard, which originates no coal. The same terminal factor enters in the computed results whether the freight is handled through a large or through a small, through a costly or through an economical terminal.

In the nature of things these assumptions cannot be correct. The results may prove what the average revenue from all 300 mile hauls over all kinds of lines must be to equal the average cost. They cannot be the costs of any particular 300 mile haul—except by the merest accident. Dr. Edwards protests that the proportions of branch line traffic are small but this is not proved and it is open to question.

But it may be argued that while the computed figures may not represent the actual costs of particular movements, nevertheless they may be accepted as fairly reflecting the average costs of transportation per 100 pounds in the two territories. However, this would

permit the use of the figures only if there were the same variations in the two territories which produce the averages. But this is not so. For example, witness Bell's exhibits and his analyses of Dr. Edwards' studies show that there are far greater differences in the proportions of coal traffic to total traffic among the several principal roads in southern territory than there are among the railroads in eastern territory. Then too, as we shall presently show, there are great differences in the characters of freight as a whole in the two territories, the transportation and handling of which goes into the total territorial figures from which the averages are deduced and affect both the total and the average costs.

Even more important under the present point is the fact that by no means can it be assumed that the same kind of class rate traffic will move over the same kind of railroad line, in the same kind of train, for a like distance in each rate territory. Boots and shoes may move largely over branch or secondary lines in the South and over main lines in the North, or vice versa. Electrical appliances in the North may move over the C. & O. with its heavy coal traffic and consequent low operating unit costs and in the South may move over the Atlantic Coast Line which has little or no coal traffic to reduce its average unit cost figures. Under these circumstances, computations such as those of Dr. Edwards can afford no basis for deciding what the relationships to one another of the respective class rate levels should be as applied to the movement of any particular freight.

B. *The computations are based upon groupings of railroads which render the averages irrelevant and distort the results to such an extent that they have no probative value here.*

Since the ultimate figures which Dr. Edwards has derived purport to be average unit costs for the railroads as a whole in the South and in the East, a great deal depends upon the groupings which he has employed. It is submitted that he has grouped together railroads in such a way as to distort the results beyond any possible use in this proceeding.

1. *The exclusion of the Pocahontas lines from official territory is unjustified.*

First of all, in his original computations (Exs. 2, 3, and 13) Dr. Edwards excluded the Pocahontas lines from the northern group, giving as his reason for doing so that their traffic is so predominantly coal that they stand in a class by themselves and that their results should not be averaged with those of the other railroads of the eastern district. It is submitted that this exclusion of the Pocahontas lines was unwarranted for the purposes of this case.

There are only two ways of employing costs in dealing with rates. One is to compute the costs for individual movements and compare these with the revenues from the applicable rates. The other, whose validity we question but for which Dr. Edwards' computations are designed, is to assume that since all railroads in a given region are competitive with each other they must charge the same rates on like freight, and therefore, the operating results of all such railroads should be

totalled and averaged in determining the propriety of the rate levels as a whole. But this method can be justified, if at all, only provided that the operating results of *all* railroads over which the same rate level applies are thrown into the pot.

Dr. Edwards apparently attempts to support his separation of the Pocahontas lines from the other railroads of the eastern region by assuming that there is a separate territory which he calls "Pocahontas Territory", as though it were a rate-making territory like official or southern. Perhaps, if this were so, and if there were a separate class rate level within that territory, Dr. Edwards' treatment of the Pocahontas lines would be consistent. But of course there is no Pocahontas rate territory.

In his Exhibit No. 2, in which he sets out the territorial groupings which he has made for the purpose of computing average cost figures for different territories, Dr. Edwards has described his territory No. 5, which he refers to as "Pocahontas Territory", as embracing the total operations of the Chesapeake & Ohio, Norfolk & Western, and Virginian railroads.

If the Commission will recall the reasons explained in Point I for the growth and existence of rate territories it will understand why there is no "Pocahontas Territory". It is certainly geographically impossible to carve out, as Dr. Edwards has done, a new territory to be called Pocahontas Territory embracing only the operations of the Pocahontas lines and then to prescribe a separate and different rate level for this so-called territory on the basis of its average costs. Admittedly, if costs were made controlling, this rate level would have to be less than the rate levels for other lines

in official territory. A glance at the map, however, will show that the Pocahontas lines themselves traverse official territory, that they compete with other railroads in the territory, and that their lines both parallel and cross the lines of other railroads, upon whom, on such a theory of rate-making, a higher level of rates would obtain.

Bell's Exhibit No. 166 shows that the Chesapeake & Ohio Railroad operates 734 miles of line in what is now central freight association territory, including a line 230 miles long from Portsmouth to Toledo, Ohio, and a line 285 miles from Cincinnati, Ohio, to Chicago, Illinois, on both of which it obviously is in direct competition with numerous other railroads which, according to Dr. Edwards, would be excluded from this Pocahontas group. It is inconceivable that the Chesapeake & Ohio could have a different level of freight rates from Cincinnati to Chicago than applies over the Pennsylvania, B. & O. or New York Central. The Norfolk & Western similarly has 262 miles of line in central freight association territory and it has 239 miles in trunk line territory, where it must be in direct competition with other railroads which are not included by Dr. Edwards in his so-called Pocahontas group.

Moreover, it cannot be argued that the coal traffic of these Pocahontas railroads moves over lines which can properly be excluded from official territory from a rate-making standpoint and can therefore be treated separately. Page 2 of Exhibit 166 shows that a total of 20,214,000 tons of coal originating on the Chesapeake & Ohio and Norfolk & Western railroads moved across the heart of central freight association territory to Great Lakes ports for transshipment; in addi-

tion 10,520,000 tons moved to destinations in Ohio for track delivery; 2,603,910 for track delivery at Indiana points; 7,741,000 tons to destinations in the lower peninsula of Michigan, and 6,900,000 tons to Illinois and to St. Louis, Missouri.

Neither can it be said that these Pocahontas roads may be disregarded because they handled no appreciable amount of freight other than coal. Page 2 of Exhibit 166 shows that in 1939 the Chesapeake & Ohio handled over 13,000,000 tons of freight other than coal, the Norfolk & Western over 9,000,000 tons, and the Virginian over 1,500,000 tons. In this connection, since Dr. Edwards had no hesitancy in including the Louisville & Nashville, Illinois Central, and Southern in his southern grouping, it is worthy of note that per mile of road operated in 1939 the Chesapeake & Ohio and Norfolk & Western handled more tons of carload traffic other than coal and coke than did the L. & N. and Southern and almost as much as the Illinois Central (Ex. 226). These roads, therefore, must have class rates and because of their territorial locations the class rates must be the same as those of other railroads in official territory.

Consequently if like is to be compared with like, if the level of rates for a group of railroads is to be tested by average costs, the costs must be those of the same railroads over which the rates apply. Hence the "territories" for cost computation purposes must be the rate territories. And since, in so far as the class rates are concerned, there is not and probably cannot be a Pocahontas territory such as Dr. Edwards has set up different from official territory, so the Pocahontas lines must be included with the other lines of

official territory in computing average cost on which to base decisions as to the official territory rates.

2. *In other respects Dr. Edwards' groupings are geographically incorrect for the purposes of this proceeding, and the average figures which he computes for the South are distorted and reduced by the inclusion of results of transportation within official territory.*

Notwithstanding the fact that the issues in the present case relate to the propriety of the official territory class rates as compared with the class rates in other territories, Dr. Edwards has defined four different territories, made up of different combinations of the carriers in official territory, excluding in every instance, however, the Pocahontas lines. These territorial designations and groupings he has used in his Exhibit No. 3, which he describes as "Railroad Freight Service Costs in the Various Rate Territories, 1939" and as "Cost Scales by Territories" and in his Exhibit No. 13, which he entitles "Territorial Unit Costs for Railroad Freight Service, 1939". Thus he perpetuates in these exhibits which contain the final figures, to produce which his efforts were directed, the characteristics of his original groupings, as set forth in Exhibit No. 2, which are not groupings by class rate territories at all.

Obviously, Exhibit No. 3 does not, as its caption indicates, set forth railroad freight service costs in the various "Rate Territories" nor does it give "Cost Scales by Territories", for no freight service costs or cost scales are given for official territory, which *is* a

rate territory, while cost figures and scales are given for Pocahontas territory, which *is not* a rate territory. Somewhat similar fallacies exist in his groupings so far as the southern carriers are concerned.

This is especially serious and productive of a misleading and unjust result because, apart from the unfairness of comparing average cost figures for official territory from which the statistics of the Pocahontas lines have been excluded, with average cost figures for the South (a point discussed under the next subheading) there is a further and very important reason why the South's average figures computed by Dr. Edwards may not fairly be used in comparison with his figures for the North in determining the propriety of the respective class rate levels. This is because a very substantial proportion of the coal traffic whose results are attributed to the South and so importantly affect the final average unit cost figures is actually transported within official territory. This appears from Mr. Bell's testimony (R. 3619-3630) and Part I of his Exhibit 166.

In 1939, the Louisville & Nashville originated 23,272,000 tons of bituminous coal and the effect which this had upon its costs is indicated by the fact that its freight operating expense per revenue net ton mile was 5.356 mills, as compared with 9.215 mills for the Atlantic Coast Line, 8.408 for the Seaboard, 7.088 for the Southern, and 6.675 for all railroads in the southern region (Ex. 166, p. 5). However, of this large volume of bituminous coal originated, nearly three-fourths or 15,493,000 tons moved from mines on the Louisville & Nashville in Kentucky to destinations north of the Ohio or west of the Mississippi.* This figure included 5,-

* For corresponding and greater figures for 1941 see R. 5459-61.

353,000 tons delivered to its central freight association connections consigned to Lake Erie ports. The movement of this fifteen and a half million tons of coal was concentrated on less than 5 per cent of the Louisville & Nashville's total mileage. Of the remaining 7,778,000 tons of coal originated by the Louisville & Nashville, 2,558,000 tons was from mines in western Kentucky and nearly one-fourth of this moved to the Ohio River crossings or destinations in central freight association territory. Thus, less than one-third of the total bituminous coal tonnage originated by the Louisville & Nashville was left for distribution to destinations in southern territory on its 4,900 miles of railroad. It is apparent, therefore, that the low average cost figures shown for the Louisville & Nashville, which in turn have brought down the average cost figures of the South as a whole, were the result of the movement of this very large body of coal not to southern destinations but in C. F. A. territory.

In the case of the Illinois Central, which originated 10,211,000 tons of bituminous coal in 1939, 7,194,000 tons were from mines on its lines north of the Ohio River. These lines have not been included by Dr. Edwards in southern territory. However, the Illinois Central also originated over 3,000,000 tons of coal at mines in western Kentucky, of which approximately half moved to destinations north of the Ohio River or west of the Mississippi through Cairo and the results of this movement are included in Dr. Edwards' figures for the South. It is significant that the only one of the coal-carrying railroads of the South whose lines extend generally throughout all sections of southern territory is the Southern and that its average freight operating

expense per revenue net ton-mile is substantially higher than that of the other three or four coal-carrying lines. This would appear to indicate that despite its rather substantial proportion of coal traffic (32.84 per cent as compared, however, with 58.83 per cent for the Louisville & Nashville and 66.42 per cent for the Clinchfield), its operations throughout southern territory have caused its costs to be materially higher than those of the others. Consequently it is apparent that the average computed cost figures for the South as a whole are reduced by the results of the transportation of substantial quantities of coal within the North. They do not, therefore, represent in any way the average computed cost of transportation within southern rate territory.

3. *The exclusion of the Pocahontas lines from the northern group, the inclusion of the few coal-carrying roads of the South with the southern group, and the inclusion of several "bridge" lines with the southern group are entirely inconsistent and produce results which are distorted and of no probative value for the purposes of this proceeding.*

Any attempt to use computed cost figures set forth in Dr. Edwards' Exhibits 2, 3, 13 or 195 as a basis for prescribing freight rates or for measuring what the relative average levels should be of the freight rates in official territory and in southern territory involves grasping at both horns of a dilemma. The argument that territorial average cost figures may properly be considered in prescribing class rates for a territory as a whole and for every railroad in that territory rests

on the premise that all of the railroads in a given section of the country are, to a considerable extent, in competition with each other; that therefore they must all maintain the same level of rate scales even if these are more profitable for some railroads than for others; and that consequently, in determining what that rate level should be so far as costs are concerned, the operating results of all railroads within the territorial limits should be combined and averaged. On the other hand, the use of Dr. Edwards' cost figures for the northern lines, in computing which he has excluded the Pocahontas lines and has treated them as though they were in a separate rate territory on the ground that their traffic is predominantly coal, involves the assumption that even where railroads are physically located within certain territorial boundaries, nevertheless if the nature of their traffic differs markedly from that of other carriers within those territorial limits their operating results should not be included and averaged with the operating results of other railroads in the territory.

There may be a logical justification for proceeding on one assumption or on the other, but there is neither logical nor factual justification for proceeding on both, but this is what Dr. Edwards has done. He has excluded the Pocahontas lines in arriving at average computed costs for the carriers in the North on the ground that their large volume of coal traffic sets them apart. At the same time he has included the coal-carrying railroads of the South in his southern group for the alleged reason that despite their preponderant coal tonnage they are geographically located in the South, are competitive with the other southern railroads and have the same class rates.

That this is a most serious fallacy is demonstrated by the fact that it is only in this way that the average computed costs for the South are made to appear no higher than those of the North, whereas if either one assumption or the other as to the method of grouping had been adopted there is every reason to believe that the results would have been adverse to the contentions of those who insist that on the basis of costs there must be rate parity.

Thus if territorial boundaries, the application of uniform rate levels to all carriers within those boundaries, and competition between such carriers are assumed, then any average cost computations for official territory must include the operating results of the Pocahontas lines. If this is done, the computed average unit costs for the carriers as a whole in official territory are most certainly bound to be less than the corresponding figures for the carriers in southern territory. We say "bound to be less" because unfortunately Dr. Edwards, despite his many figures, gives us no results upon which comparisons can be made of average cost figures for the carriers grouped according to rate territories.* However, that such must be the result is ap-

*In Exhibits 2, 3, and 13 the Pocahontas lines are shown separately and there are various combinations of the remaining carriers in official territory other than the R. F. & P. However, no average figures are given for the carriers grouped in accordance with the rate-making groups, that is, for carriers in official territory as a whole, which would include the Pocahontas lines. On the other hand, these same exhibits give figures for the South but including the R. F. & P. and lines of the Southern and M. & O., which are not in southern classification territory. These differences are not corrected by Exhibit 195. This sets forth the computations for various combinations of carriers, but here again the combinations are not in accordance with rate-making groups. There are figures in which the Pocahontas lines have been included with the eastern carriers, but in these figures the railroads in Kentucky have also been included. Furthermore, the figures in Exhibit 195 do not afford accurate comparisons with the figures in the earlier exhibits because different terminal factors are used, different average loading figures, and a different percentage rate of return.

parent from the figures. Thus, Table 1 on page 20 of Exhibit 2 shows figures for what is called Cost Level II for freight in box cars with a net load of 25 tons for a haul of 300 miles. For eastern territory, excluding Pocahontas, the figure is 11.6 cents, for Pocahontas 9.1 cents and for southern 10.4 cents. A straight mathematical average of the Pocahontas and Eastern figures would produce 10.3 cents for official territory. This, of course, is not the correct way to arrive at the average result and when the large volume of traffic handled by the Pocahontas lines is considered, it is believed that the official territory figure would probably be lower while the southern figure would be somewhat higher if the R. F. & P. results were excluded therefrom.

Turning to the other horn of the dilemma and assuming that territorial boundaries and competition between railroads are not to be controlling in determining what railroads should be grouped together for the purpose of computing average cost figures, and assuming that because of the predominance of their coal traffic the Pocahontas lines should be excluded from the official territory group, then there is as much reason for separating the carriers in southern territory. In other words, if rates in official territory are not to be tested by cost figures which include the operating results of the Pocahontas lines, because these lines are predominantly coal roads, then for southern territory comparable cost figures cannot be arrived at by grouping all of the railroads within the territorial limits of that territory. This is so because there is an even greater discrepancy between railroads in the South in the proportions of coal traffic handled by them than obtains between railroads in official territory.

This appears from Bell's Exhibits Nos. 166, 225, 226, and 227. In official territory, most of the principal railroads handle substantial proportions of coal and coke traffic, the percentages of coal and coke traffic to total tons handled by the major carriers in the Great Lakes and central eastern regions ranging from a low of 33.58 to a high of 99.87. Moreover, the coal traffic is diffused to a much greater degree in official territory. For some of the more important official territory lines the percentages of coal and coke tonnage to total tonnage handled were as follows:

Baltimore & Ohio	45.83
Pennsylvania	45.59
Reading	58.94
Western Maryland	57.97
Delaware, Lackawanna & Western	48.08
Erie	43.92
New York Central	48.55

When we turn to the South, conditions are quite different. 66.42 per cent of all tons handled by the Clinchfield consisted of coal and coke; for the Louisville & Nashville the figure is 58.83; for the Illinois Central 32.82; and for the Southern 32.84. However, in the case of the Atlantic Coast Line, where it is contended that the same level of freight rates should apply and whose operating results are included with those of the other four carriers just mentioned, the coal and coke traffic constitutes only 6.18 per cent of the total tons handled. For the Seaboard the figure was but 12.92, for the Central of Georgia 15.45, for the Georgia & Florida 5.78, for the Atlanta & West Point 11.18, for the N. C. & St. L. 10.98, and for the G. M. & N. 3.67.

In short, if for the purpose of testing levels of class rates in the South and in the North average cost figures for the northern railroads are to be computed without including the operating results of the Pocahontas lines because of their proportions of coal traffic, then obviously it is improper to assume that average costs computed for the South for the same purpose, which include the operating results of the Clinchfield and Louisville & Nashville, afford a proper standard for testing the levels of the class rates of the Atlantic Coast Line, Seaboard, or G. M. & N. Dr. Edwards admitted that the costs of handling coal traffic are lower than those of handling other freight and that therefore a large proportion of coal traffic tends to depress average costs of handling all traffic. He agreed, therefore, that if the statistics of the Louisville & Nashville, Illinois Central, Clinchfield, and Southern should be excluded from southern territory, higher average costs would be produced for the remaining railroads in that territory. That this is so is indicated by the computations included in his Exhibit 195, in which, at the request of Kentucky, he has produced "cost" figures for Kentucky alone and for the South exclusive of Kentucky. A very large proportion of the coal traffic handled by the major coal carriers of the South originates in Kentucky. Consequently average figures for the South excluding Kentucky give some idea what the average computed costs for the South would be if the major coal carrying lines of the South were excluded entirely from the southern group as Dr. Edwards has excluded the Pocahontas lines from his northern group.

Exhibit 195 shows, for example, that for a haul of 300 miles, the so-called fully distributed costs for hauling 30 tons of freight in a box car a distance of 300 miles would be for the South as a whole, excluding Kentucky, 106 per cent of the average figure for the South with Kentucky included. In other words, the elimination of Kentucky raises the average figure for the rest of the territory 6 per cent.

As a matter of fact, there is much less justification for grouping the major coal-carrying railroads of the South with the non-coal-carrying lines in arriving at average computed costs than there is for grouping the Pocahontas lines with the other northern carriers in arriving at computed average costs for official territory. Stated in another way, because coal traffic is much more uniformly diffused among the major railroad systems of official territory than is the case in the South, average computed costs for the official territory lines as a group, including the Pocahontas lines, are much more likely to approximate the average costs for all of the major systems than are average computed cost figures for the southern railroads as a whole, including the coal-carrying lines, to reflect the actual costs of transportation by the non-coal-carrying southern railroads.

How far the figures which Dr. Edwards has computed as representing average costs for the railroads of the South as a group must be from reflecting the actual costs of transportation over some of the more important southern lines is shown by page 5 of Witness Bell's Exhibit 166.

The Seaboard, Atlantic Coast Line and Florida East Coast for example are certainly important factors in the South's transportation system. The Seaboard and Atlantic Coast Line are North-South carriers whose

lines serve a large part of the industrial South and of the South which has been most active in its complaints. They are lines over which manufactured goods move from the South to the North. But none of them originates more than a hat-full of coal. This fact greatly increases their costs as compared with the costs of the few railroads of the South which have a relatively large volume of coal traffic as is shown by the following figures taken from Exhibit 166.

Railroad	Per cent coal originated as of all freight	Average freight operating expenses per revenue net ton mile
Clinchfield	74.34	3.541 mills
L. & N.	67.69	5.356 "
Ill. Central	38.43	6.151
Southern	28.57	7.088
No. Ala.	51.55	4.929
A. C. L.	.05	9.215
S. A. L.	.11	8.408
F. E. C.	.02	9.317
A. & W. P.	.00	11.587
N. C. & St. L.	14.77	8.760

That an average computed figure for the South as a whole must be utterly meaningless as an indication of the cost of transporting freight over these important non-coal originating lines is indicated further by the fact that, as compared with the foregoing expense figures of the non-coal-carrying lines ranging from 8.408 to 11.587 per revenue net ton mile, the average revenue net ton mile expense of the southern railroads as a whole, by reason of the grouping therewith of the figures for the few coal carrying lines, is only 6.675 mills. Moreover, as appears from page 8 of Exhibit 166 the average for Dr. Edwards' southern group is also reduced by the operating results of the three bridge lines, the C., N. D. & T. P., A. G. S. and N. D. & N. E., whose operating expense figures were far below those of the five important southern railroads just listed and below the average for the southern group as a whole (R. 3633, 5461-3). Of course, as we have already remarked, the alleged justification for using average figures is that for competitive reasons the rates must be the same throughout a territory. But there is no means of spreading the profits and losses so as to average revenue results among the railroads themselves. It would not help the financial position of the Atlantic Coast Line to fix rates for the South as a whole which would meet net ton mile expense of 6.675 mills (the average for the South as a whole) when its own net ton mile expense is 9.215 mills.

Most certainly therefore, rates cannot be found unlawful for the movement of traffic on the A. C. L. by reference to the average cost figures computed for the southern railroads as a whole. Even less can such average figures be used for the purpose of comparing the rate levels of the South with those of the North.

In the North the situation is quite different from that which has been illustrated. To be sure there are considerable differences between the ton mile expense figures for the many carriers in the North. But the distinguishing fact is that there are no such variations between the important railroad systems of official territory as obtain between the major southern railroads. The following is a table showing the corresponding figures from Exhibit 166 (p. 6) for the major official territory lines.

Railroad	Per cent coal originated as of all freight	Average freight operating expenses per revenue net ton mile
B. & O.	48.51	6.057
P. R. R.	42.30	5.952
Erie	41.69	6.004
N. Y. C.	27.05	6.480
N. Y. C. & St. L.	2.62*	5.716

Moreover, the average expense figure for the carriers as a whole in the Central Eastern and Great Lakes regions, 6.576 mills, more nearly reflects the figures for these major systems of the territory than does the average figure for the South, as we have just seen.

We submit that the considerations of which the foregoing are merely illustrative prevent the acceptance by the Commission of the results of Dr. Edwards' computations as representing the relative costs of transportation on the basis of which the lawfulness of the class rates can be determined or different class rates prescribed.

C. *Further comments on Dr. Edwards' computations and the weight to be given to them in this proceeding.*

As the basis for his computation of line haul costs Dr. Edwards undertook to ascertain for each of the respective territories: (1) The average tare weight, in tons, by classes of equipment, viz., box cars, flat cars, gondola and hopper cars, etc., and (2) the ratio of empty to loaded car-miles by classes of equipment

* But "coal handled" represented 31.04 per cent of its total freight handled.

(these data are shown in Appendix B to Exhibit 2, and Table 86, page 146 of Exhibit 3)[1].

The procedure then was as follows:

> (1) The purported freight-train car running expenses per loaded car-mile, for each different type of car was determined by increasing the *average* unit cost of this factor in each territory by the average ratio of the empty to loaded car-miles for the territory. For example, the average unit cost for all cars in Eastern Territory No. 2 was found to be 1.707 cents per loaded car-mile.[2] The ratio of empty to loaded car-miles in that territory, taking box cars and gondola and hopper cars to illustrate, was found to be 35 per cent and 84.3 per cent, respectively.[3] Thus the unit cost per loaded car-mile for Eastern Territory No. 2 was shown as 2.304 cents for all box car traffic, and 3.146 cents for all gondola and hopper car traffic, irrespective of the commodity loaded, the weight of the load, the distance hauled, or the kind of train in which the car was hauled.[4] [5]

[1] The same character of information is shown on the second unnumbered page of Exhibit 13, for the United States and for some of the territories included in Exhibit 2, and for certain combined territories. Likewise, in Table 15, page 47 of Exhibit 195, for the territories covered by that exhibit, except that the data for certain of those territories include only box cars and gondola and hopper cars.

[2] Column 3, Table 87, Exhibit 3.

[3] Table 86, page 146, Exhibit 3.

[4] For example: It is a matter of common knowledge that tremendous quantities of coal are transported from Ohio and Pennsylvania mines to Lake Erie ports and that the cars in which it is transported are loaded on the return movement with iron ore moved by vessel to these ports. Yet, under Dr. Edwards' formula the cost of transporting both the coal and the ore would include an empty haul of all such cars in a ratio of 84.3 per cent of the loaded haul simply because that is the computed average ratio for gondola and hopper cars for the entire Eastern Territory No. 2.

[5] The same infirmity is found in all cost factors in which the empty to loaded ratio is used.

(2) The purported unit cost per revenue car mile of the carload running expense common to all cars[1] was determined for each type of car by increasing the average unit cost of this factor in the ratio of the empty to the loaded car-miles for that type of car. Again taking for illustration box cars and gondola and hopper cars in Eastern Territory No. 2, the average unit cost for *all* cars was found to be 1.838 cents; applying the ratios shown in paragraph (1) of 35 per cent and 84.3 per cent, respectively, a unit cost of 2.481 cents was computed for box cars and 3.387 cents for gondola and hopper cars.

(3) The number of gross tons of the car and contents, including empty return, then was ascertained by adding to the average tare weight of the car which, for example, in Eastern Territory No. 2 was ascertained to be 23.3 tons for a box car and 22.1 tons for a gondola or hopper car, the average ratio of the empty to the loaded haul, which in that territory is 35 per cent for box cars and 84.3 per cent for gondola and hopper cars. The tare weights of 23.3 and 22.1 tons, respectively, were increased in those ratios, making an average total tare weight of 31.455 tons for box cars and 40.7303 tons for gondola and hopper cars. Then the weight of the lading was added. The resulting number of gross tons was multiplied by the average unit cost per gross ton-mile for carload and less-carload other remaining running expenses[2] to ascertain in cents per 100 pounds the amount of that

[1] Column 6, Table 87, Exhibit 3.
[2] Column 10, Table 87, Exhibit 3.

expense per loaded car-mile. Such expense will vary, of course, according to the weight of the lading.

The running (line-haul) expense per 100 pounds of net load per mile was ascertained by dividing the total running (line-haul) expense per loaded car-mile by the net weight of the lading. Obviously, to compute the line-haul expense for any given distance the number of miles would be multiplied by the expense in cents per mile. To this would be added the terminal expense, in cents per 100 pounds, arrived at in the manner hereinbefore recited, to ascertain the combined terminal and line-haul expense.

Although the same unit costs ascertained by Dr. Edwards may be employed in the computations of the total cost for any type of car, it is perfectly obvious that the costs must vary for different commodities loaded in the same type of car (as well as for other commodities in different types of cars)—even for the same distance, by reason of the widely different average loadings of different commodities. For example, commodities allocated to box cars in Table 4 of Exhibit 195, show a range in average loadings in Eastern Territory of from 6 tons for passenger automobiles to 46.1 tons for wheat, the range in southern territory being from 6 tons to 44.8 tons. The averages for gondola and hopper car commodities in eastern territory range from 17.8 tons for machinery and boilers to 72 tons for iron ore, and in southern territory from 16.9 tons for machinery and boilers to 61.1 tons for iron ore. The averages for refrigerator car traffic in the eastern district range from 10.6 tons for bananas to 22.4 tons for

canned foods, and for southern territory from 8.9 tons for fresh berries to 12.3 tons for canned foods. The averages for tank car traffic in the eastern district range from 22.7 tons for denatured alcohol to 49.4 tons for sulphuric acid, and for southern territory from 20.6 tons for lubricating oils and greases to 62.8 tons for sulphuric acid. The averages for flat car traffic in the eastern district range from 26.6 tons for logs to 29.4 tons for pulpwood and in southern territory from 26.4 tons for posts, piling and poles to 38.6 tons for pulpwood.

These differences in the average loadings of different commodities, taken alone, demonstrate the impracticability of employing the unit costs evolved by Dr. Edwards for the determination of a class rate level in any territory, or different levels in different territories. Incidentally, mention may be made of the fact that it is not uncommon for the same commodity to be loaded in different types of cars; for example, Table 4 of Exhibit 195, shows that watermelons are loaded in box cars, stock cars and refrigerator cars; that fifty per cent of cured, dried or smoked meats is loaded in box cars and fifty per cent in refrigerator cars; that twenty-five per cent of all iron and steel articles rated fifth class in official classification is loaded in box cars and seventy-five per cent in gondola and hopper cars. Dr. Edwards' studies show that the average tare weight of a box car in the eastern district is 23.3 tons, and that the ratio of empty to loaded car-miles is 35 per cent; that the average tare weight of a refrigerator car is 27.5 tons, and the ratio of empty to loaded car-miles is 86.9 per cent; that the average tare weight of gondola and hopper cars is 22.1 tons, and the ratio of

empty to loaded car-miles is 84.3 per cent. Under Dr. Edwards' studies the cost of transporting the same load in a refrigerator car would exceed the cost of transporting it in a box car. Many similar situations exist with respect to commodities loaded in box cars and gondola and hopper cars and, to some extent, on flat cars; likewise, with respect to certain commodities loaded in box cars and in tank cars.

Moreover, it is apparent from the foregoing description of the method employed in computing line-haul costs, that the results depend upon the assumptions indulged in as to the types of cars used for the transportation of different commodities. This is so because both the tare weights and the empty hauls of different types of cars differ, and both factors affect the gross ton mile figures. The record, and especially the testimony and exhibits of Mr. Bell, raise serious questions as to the assumptions made by Dr. Edwards in this regard (R. 3643-6, 5465-70; Exhibit 196, p. 114).

We therefore submit that despite the valiant efforts made by Dr. Edwards, the figures which he has produced do not justify, much less require, a finding that the average cost of transporting a given quantity of freight for a specified distance in a certain type of car is no higher in the South than in the North. There is, therefore, no justification for reaching a conclusion here different from that which the Commission has expressed in numerous cases: that in view of the greater density of traffic, the character of freight and the more favorable operating conditions, costs of operation per unit of freight are probably substantially less in the North than in the South.

In *Atlantic Coast Line R. Co.* v. *Arcade & A. R. Corp.*, 194 I. C. C. 729, the Commission at page 757 of its report said:

> "The statistical evidence before us supports the view we have expressed in other proceedings that *transportation costs are generally higher in the southern than in the eastern group. . .*"

And in *Divisions of Rates, Official and Southern Territories,* 234 I. C. C. 175, after analyzing the various cost studies there before it, the Commission concluded (p. 189):

> "The statistical evidence, unsatisfactory as it is, leads to the conclusion that *transportation costs* on the traffic here considered (and this embraced class rate traffic) *may properly be considered to be higher in the South* (than in the North), and that, although *the exact degree of difference* is indeterminable, it *is not negligible. . . .*" (Italics ours.)

The correctness of these conclusions is confirmed by figures in the record here, which, it is submitted, provide a much more sound basis of determining relative costs for rate-making purposes than do Dr. Edwards' computations. In prescribing a scale of rates for general application throughout a territory, a traffic manager or a regulatory body should, in the nature of things, be more concerned with statistics which show how average revenues per ton-mile and average costs per ton-mile of freight actually handled compare, than with theoretical computations. Especially is this so if these theoretical computations involve allocations and formulae and when finally completed purport to show what, theoretically, it would cost to transport 20 tons

of freight in a box car 200 miles if the railroads should happen to have at some future time the correct number of 20-ton shipments for 200 miles to produce the total costs from which the allocations were made. Therefore, as Witness Bell testified, from a rate-making standpoint average freight operating expenses per revenue net ton-mile and per net ton-mile, both revenue and non-revenue, are much more useful in rate making than such theoretical computations. Page 6 of Exhibit 166, previously referred to, shows that in 1939 the average revenue per net ton-mile for the railroads in the central eastern and Great Lakes region was 6.576 mills. For all railroads in the southern region the corresponding figure was 6.675. If, however, the Illinois Central, Y. & M. V., Louisville & Nashville, and Clinchfield are excluded the figure for the South becomes 7.623 mills.

Other computations which indicate convincingly that average costs are lower in official territory as a whole than in the South were presented by witnesses Tassin and Kennedy for the southern railroads.

Witness Tassin estimated that what he called the "revenue need ratio" of the carriers in the southern district was 3 per cent greater than that of the carriers in the eastern district (Ex. 22, p. 3).

Witness Kennedy in his Exhibit 18 computed that the total freight service operating expenses, taxes, joint facility and equipment rents, plus 5¾ per cent return and plus passenger deficit amounted to 13.94 mills per revenue ton-mile for the railroads of the southern region as compared with only 12.29 mills per revenue ton-mile for the railroads of the eastern district, including the Pocahontas region.

We therefore submit that the Commission cannot properly predicate its decision here upon a finding that the average costs of transporting all freight in official territory are as high as in southern territory.

But even if such a finding were justified, nevertheless, it certainly can not be concluded therefrom that the costs of handling any particular freight or category of freight are the same in the two territories. Moreover, even if the latter conclusion were permissible it still would not follow therefrom, as we shall now show, that so long as rates on raw materials in the South are lower than those in the North and so long as there is not mile for mile parity of all rates, there must nevertheless be parity of class rates and the existing differences in the class rate levels are unlawful.

And finally we submit that whatever inferences may be deduced from the evidence as to transportation costs, this evidence most certainly does not warrant findings upon which could be predicated either a maximum rate order which would require great reductions in the revenues of the carriers in the South through reductions in the class rates or a minimum rate order which would compel the railroads in official territory to increase their rates against their will and would increase the cost to shippers of doing business in the North.

POINT IX

Even if the "cost" computations would support a finding that the average costs of transporting all traffic, or indeed, of transporting class rate traffic itself were the same in the several territories, this would not justify a conclusion that the existing differences in the class rate levels are unlawful.

A. *Dr. Edwards' computations, if taken at face value, show only the average revenues which all freight moving for given distances, in certain types of cars and with certain net loadings must produce in order, on the average, to defray the carriers' costs. They ignore values, differences in the theories of the rate structures, competition, the relative volumes of different kinds of freight, and other factors which are important in rate making.*

As we understand, no claim is made by Dr. Edwards himself that his computations should determine the relations which should exist between the class rate levels in the several rate territories.

The most that Dr. Edwards' studies purport to produce is a more than usually refined apportionment of total costs to theoretical movements involving shipments having given weights in certain types of cars and for specified distances. It may be argued that this is a sufficient refinement for cost accounting purposes on the theory that obviously it can cost no more to transport 40,000 pounds of one commodity than 40,000 pounds of another in the same type of car for the same distance, it being assumed that neither is more damag-

ing than the other to the equipment. This, however, is of little help in the matter of freight rates, because it fails to take into account any of the other considerations, such as value and "what the traffic will bear", which must be reckoned with in making rates. Freight rates are not based entirely or even largely upon weight density. These limitations upon the use of his cost computations were fully recognized and fairly stated by Dr. Edwards. Thus, at the beginning of Chapter I of his Exhibit 2, he said:

> "The cost study does not reflect those factors which occasion differences in rates which cannot be justified under a strict adherence to a cost of service principle. Such factors include the value of the service, ability to pay, value of the commodity, competitive relationships, degree of manufacture, etc. Because of these factors some rates may be above the costs indicated and other rates may be below such costs, but on the average all traffic must earn the amounts shown if the carriers' revenues as a whole are to cover the elements of cost listed."

The Commission has itself frequently recognized that rates are not, and in the nature of things, cannot be related on the basis of relative costs. For example, long ago in the *1915 Western Rate Advance Case,* 35 I. C. C. 497, 561, it said:

> "Rate making in the past has not been prosecuted parallel with competitive cost studies. The competition of markets, of producers, and of rival carriers, especially by water, has resulted in a freight rate system which cannot be assumed to be so adjusted that the rates effective result in earnings proportioned nicely to the respective costs involved."

Moreover, although Dr. Edwards' computations are referred to as "cost studies", that term is really a misnomer. The final figures which his processes have produced are more aptly to be described as estimates of "average revenue needs." Thus, if we correctly understand what Dr. Edwards has done, the figure of 11.6 in column 3, line 4 of Table 2 in Exhibit 2 means only that if all box car traffic with a net loading of 25 tons moving 300 miles in official eastern territory other than over the Pocahontas lines produces revenue which averages 11.6 cents per 100 pounds, the railroads as a whole on such traffic will earn their operating expenses, rents and taxes—provided at least that all other shipments of different loadings and for different distances likewise yield revenues, the averages of which equal the figures per 100 pounds in the appropriate columns and lines of Dr. Edwards' exhibits. A particular shipment of 25 tons for 300 miles may produce revenue which is more or less than 11.6 cents per 100 pounds, but if the average of the revenues from all such shipments is 11.6 cents per 100 pounds the computed costs are met. On cross examination, Dr. Edwards explained this angle of the matter as follows (R. 3235-3237):

> "Q. In order that we may be sure that we understand the conclusion to be drawn from the figures which are there shown, and from similar figures in the other table, I would like to ask you this question: assuming the correctness of your computations, and the method employed, is it the correct conclusion to be drawn from table 2 that if, looking for example at line 2, the average revenue per ton of all railroads in Eastern territory, excluding New England and Northern Illinois, from freight handled by them in box cars for an average

distance of 300 miles and an average loading of 24.6 tons, is 11.8 cents per hundred pounds, then the railroads have earned their costs on the basis of cost level No. 2? A. That is true, Mr. McCollester, based on our first cost study put in.

Q. (By Mr. McCollester.) Now, if it should so happen, Dr. Edwards, that of freight having that average haul and that average loading per car in Eastern territory, some freight should produce revenue less than 11.8 cents per hundred pounds and other freight should produce revenue in excess of 11.8 cents per hundred pounds, the railroads would earn their costs, under cost level No. 2, if the average came out to be 11.8 cents per hundred pounds; is that correct? A. Yes.

Q. Therefore, would you not agree, Doctor, that if it should appear that the average costs so computed for that length of haul and that loading in one section of the country were the same as in another, and that some freight in one territory yielded lower revenue than in another territory, while other freight yielded a higher revenue, the fact that the costs were equal would not indicate that all of the rates would have to be equalized, on all classes of traffic, in order to yield cost, would it? A. That is right. There might be a different distribution of the transportation burden, as between different commodities in different territories.

Q. And that is in effect what you mean, is it not, when you say, in a somewhat different connection, I believe on page 3 of your Exhibit No. 2, that if some service pays less, other service must pay more? A. Yes."

It is clear, therefore, that Dr. Edwards himself did not intend, as, indeed, he could not have done, that the relationships between his computed figures of costs or revenue needs for one territory and the corresponding figures for another territory should be taken as fixing

the relationships which must also exist between the levels in the two territories of the rates on a particular *portion* of the traffic carried—such as class rate traffic. Such a conclusion would follow only if the rate levels on all other traffic in the two territories were thus related so that in order to produce average revenues from all traffic in proportion to the respective average costs or revenue needs, the levels of the class rates must be similarly related.

As we have seen, territorial rate-making has not become obsolete. It offers certain advantages in direct contact between carriers and shippers and may well be necessary until the unification of railroads proceeds to the point where railroad systems extend throughout several different territories. This being so, the traffic in each territory must support the transportation machine of that territory and the cost of maintaining and operating the entire railroad machine of each territory must be distributed over the traffic as a whole in that territory. This is what we mean by the term "distribution of the transportation burden." How the total transportation burden in each territory shall be distributed among the millions of individual shipments handled by the carriers is a matter, in the first instance, within the business judgment of the carriers subject to regulation by this Commission. Since it may well be, as has indeed been the fact, that the views of the railroad rate-making officials in one territory differ from those of the officials of carriers in another territory as to the proportions in which different kinds of traffic should contribute revenue to defray the total costs, it does not follow, as Dr. Edwards agrees, that parity of figures as to average costs or average revenue needs

implies parity of rate levels on one kind of traffic alone if the rate patterns as a whole are different and there are different rate levels on other freight. Four plus six and two plus eight both produce an average of five. The fact that the average cost for a given weight of freight moving in a box car for a given distance is computed as five for both the North and the South does not mean that because the rate on that commodity in the North is six, the rate in the South must likewise be six so long as the rate on another article in the South is only two as compared with a rate of four on such other article in the North. Neither does it mean that because the rate on a manufactured article in the South is eight the rate in the North must be eight. All that is established is that the average of all the rates, class and commodity, for the given loading and distance must be five in both territories.

Thus, if it be the fact that the rate on a raw material, like pig iron, is substantially less for a haul of 300 miles in the South than is the corresponding rate on pig iron in the North, an article made from pig iron must pay a higher rate for a 300-mile haul in the South than in the North to produce the same average revenue for that length of haul.

Moreover, when there is a great difference in the character of freight transported and in the proportions of different kinds of freight in different territories, the bearing of computations of average costs or revenue needs upon the levels of freight rates on a small fraction of the total freight becomes even more remote. That both of these conditions, namely, a difference in the freight rate patterns and a difference in the volume and makeup of the total traffic to be transported in each territory, exist is amply demonstrated by the evidence.

B. *The great differences in the influencing factors, theories and patterns of the rate structures in the several territories prevent any conclusion being drawn from the fact that computed average "cost" figures are the same, that therefore the rates on a particular portion of the total traffic in each territory are unlawful if not on the same level.*

The histories of the rate structures in the North and in the South and some of the reasons underlying their development were outlined and discussed by Mr. T. W. Van Metre, Professor of Transportation at Columbia University, and by Mr. Charles E. Bell, who is probably one of the best informed men in the country on this matter.

Mr. Bell testified that these rate structures differ greatly due to the differences in the characters of the traffic, the competitive forces and other circumstances surrounding the making of rates and transportation of freight in the two territories.

From the beginning of the development of railroads in official territory, a large volume of traffic, both high-grade and relatively low-grade, has moved on class rates or on rates related thereto. The class rates in official territory differ materially from those in other parts of the country and, with the exception of certain rates in western trunk line territory, they are lower than the class rates in other sections. Furthermore, they apply to a much wider range of traffic and to a much greater proportion of the total volume of freight. In official territory a great deal of the important carload traffic moves on class rates. In the

Eastern Class Rate Investigation a test made with respect to class traffic indicated that about 68 per cent was carload (R. 3411-13).

The lower level of the class rates and of the freight rates on manufactured products in official territory has been due to several factors, such as the early industrial development of the region, and in consequence the large volume of manufactured products produced and to be transported, the large backlog of coal traffic and heavy movements of iron and steel, ore, etc. These factors have influenced the rate policies of the railroads in official classification territory. Again, this rate policy has been affected by competition arising from the waterways in official territory. On the extreme eastern fringe of official territory competition was and is encountered from water carriers operating along the North Atlantic seaboard. On the extreme west there is competition with water carriers on the Mississippi River. A vital factor in the official territory rate adjustment has been the competition of the Erie Canal and later of the New York State Barge Canal System, and of the Hudson River, the Great Lakes, the Ohio River, the St. Lawrence River, and the Welland and Chicago River canals. By means of these waterways, traffic may be moved by water from the most eastern part of official territory to its western boundaries. This competition has inevitably affected the rate-making policies of the railroads in that territory (R. 3413-15).

The rate structure in southern territory, on the other hand, has grown up under theories which are almost the opposite of those underlying the structure in official territory. From the earliest days up to the time of the

Commission's decision in the *Southern Class Rate Case,* comparatively little traffic other than that which can be described as high-grade merchandise was transported under class rates. On traffic moving in any volume within the South, it was the policy of the southern railroads to establish commodity rates or exceptions to the classification. On many commodities moving in appreciable volume lettered classes were employed, which were in the nature of commodity rates. The southern state commissions followed a policy of requiring relatively low rates for intrastate application for the movement of heavy low-grade commodities such as lumber, fertilizer and lime. These low rates were prescribed for the most part before the numerous independent railroads in the South became consolidated into the present large establishments. These independent railroads served different ports and all of these ports were in keen competition for the movement of traffic through them originating at or destined to interior points on their several lines. Because of this competition the same rates were established between all the South Atlantic ports on the one hand and interior southern points on the other. Thus the old intrastate rates prescribed by the state commissions became the measure of the interstate rates also applying to and from the competitive ports (R. 3417-20). It was also the practice of the southern railroads to establish commodity rates or make exceptions to the classification wherever there was any substantial volume of traffic. The South was literally honeycombed with all kinds of rates of this character, both carload and less-than-carolad.

Consequently, in contrast with the situation of the official territory lines which have low class rates applicable to a large part of their traffic, and particularly the movement of manufactured articles, the southern railroads have higher class rates but much lower commodity rates on inbound raw materials. Most of these rates applicable to the movement of inbound raw materials were originally published with a provision as to the use to which the commodities must be put and requiring that the outbound products must be shipped over the inbound line (R. 3418-21). After the passage of the Hepburn Act in 1906, these latter provisions were deleted from the tariffs but the low inbound rates are still an integral part of the rate structure of the South (R. 3421-22).

These low raw material rates in the South naturally call for higher class rates and rates on manufactured articles in order that the total transportation machine may derive sufficient revenue for its sustenance. In the North, on the other hand, lower class rates and rates on manufactured articles have been accompanied by higher rates on raw materials to manufacturing points.

These differences in the rate structures and the reasons therefor are not new to the Commission. They have been described by it in its reports in several proceedings. In the *Southern Class Rate Investigation,* 109 I. C. C. 300, 303, the Commission said:

> "The class rates of official territory are much lower in level than the class rates of southern territory. While transportation conditions justify some difference in level, they do not in themselves justify the difference which exists. But the situation is one that cannot be radically changed without a complete reorganization of the rate structures, including both class and commodity rates, of both territories. In official territory much traffic moves on class rates or classification exceptions which in southern territory moves on commodity rates. The proportion of carload traffic which moves on class rates or classification exceptions is considerably greater in the former than in the latter. If the rates are compared on which the bulk of the traffic moves in each territory, generally speaking no such wide difference in level will be found as exists in the case of the class rates. If the class rates in southern territory were reduced to something like the level which prevails in official territory, it would be necessary to transfer much traffic from a commodity-rate to a class-rate basis. A reverse process would be necessary if the class rates in official territory were raised to something like the southern territory level. Neither one of these steps is practicable in this proceeding. The class rates of the two territories are in reality based upon two differing theories of freight-rate construction. The resulting wide difference in the level of the two sets of rates, therefore, has been in this proceeding a complicating factor which could not be avoided."

Again in the *Eastern Class-Rate Investigation,* 164 I. C. C. 314, 391, it found:

> "Class rates in official territory differ materially from those in other sections of the country. They are much lower in level, with the exception of certain rates in western trunk-line territory which approach them in level. They also apply, generally speaking, to a much wider range of traffic. In the other territories class rates, at least in the past, appear to have been of particular in-

terest to jobbers, and the traffic which they move seems to have been, and perhaps still is, predominantly less than carload. For carload traffic of any important volume commodity rates have generally been provided. This is not the situation in official territory, where a great deal of very important carload traffic moves on class rates. Of the traffic embraced by the revenue test about 68 per cent was carload. Among the commodities which generally move in carloads on class rates in official territory but are given commodity rates in other territories are fruits and vegetables (including apples, cabbage, and potatoes), dairy products, vegetable oils, furniture, wrapping paper, soap, sash, doors, and blinds.

"A corollary of this situation is that, as compared with the class rates, the commodity rates on heavy, low-grade articles in official territory are often relatively high and in the other territories relatively low. While it is difficult to determine the fact with exactness, it is quite clear from general knowledge, and also from evidence here of record, that the spread between the class rates in official territory and those in effect in the South and West is not an accurate index of the differences in general average rate levels, the latter differences being relatively considerably less."

And in the *Southern Governors Case, State of Alabama* v. *New York Central R. Co.*, 235 I. C. C. 255, 265, it once more summarized the differences between the rate structures of the North and the South:

"From the beginning of railroad construction in the South until comparatively recent times a somewhat narrow range of traffic within that territory was subject to the class rates, or to rates related to the class rates. Traffic moving in any important volume, both carload and less than carload, was provided with commodity rates, usually materially lower than the class rates which otherwise would apply. The class-rate structure did not, therefore, reflect the rate level on the great volume of traffic. In the North a somewhat different situation prevailed. The class rates applied on the major part of the railroad traffic moving within that territory, including practically all less-than-carload traffic. Commodity rates were of minor importance. The class-rate level did rather closely reflect the general rate level. The result was that the class rates in the South were considerably higher than those in the North. The commodity rates in the South on a substantial volume of traffic were on about the same level as, or on somewhat lower levels than, the rates applicable on like articles within the North. The rate structures in both territories have been subjected to many changes in recent years—revision of the class rates hereinafter described and increases and reductions, principally the former, in the levels of the commodity rates—but the outstanding features of the prior development of each are still prominent.

"A situation somewhat similar to that within the South existed in connection with the rates between the two territories. The class rates were high compared with those within the North; in fact, from and to a large part of the North they were combinations on the river crossings or other border points. The greater part of the traffic which moved at these class rates consisted of high-grade manufactured articles produced in the North and consumed in the South. Only a small part of the north-bound traffic was subject to the class rates, low commodity rates being applicable on the bulk of that traffic. In order to encourage the development of mining and manufacturing in

terest to jobbers, and the traffic which they move seems to have been, and perhaps still is, predominantly less than carload. For carload traffic of any important volume commodity rates have generally been provided. This is not the situation in official territory, where a great deal of very important carload traffic moves on class rates. Of the traffic embraced by the revenue test about 68 per cent was carload. Among the commodities which generally move in carloads on class rates in official territory but are given commodity rates in other territories are fruits and vegetables (including apples, cabbage, and potatoes), dairy products, vegetable oils, furniture, wrapping paper, soap, sash, doors, and blinds.

"A corollary of this situation is that, as compared with the class rates, the commodity rates on heavy, low-grade articles in official territory are often relatively high and in the other territories relatively low. While it is difficult to determine the fact with exactness, it is quite clear from general knowledge, and also from evidence here of record, that the spread between the class rates in official territory and those in effect in the South and West is not an accurate index of the differences in general average rate levels, the latter differences being relatively considerably less."

And in the *Southern Governors Case, State of Alabama* v. *New York Central R. Co.*, 235 I. C. C. 255, 265, it once more summarized the differences between the rate structures of the North and the South:

"From the beginning of railroad construction in the South until comparatively recent times a somewhat narrow range of traffic within that territory was subject to the class rates, or to rates related to the class rates. Traffic moving in any important volume, both carload and less than carload, was provided with commodity rates, usually materially lower than the class rates which otherwise would apply. The class-rate structure did not, therefore, reflect the rate level on the great volume of traffic. In the North a somewhat different situation prevailed. The class rates applied on the major part of the railroad traffic moving within that territory, including practically all less-than-carload traffic. Commodity rates were of minor importance. The class-rate level did rather closely reflect the general rate level. The result was that the class rates in the South were considerably higher than those in the North. The commodity rates in the South on a substantial volume of traffic were on about the same level as, or on somewhat lower levels than, the rates applicable on like articles within the North. The rate structures in both territories have been subjected to many changes in recent years—revision of the class rates hereinafter described and increases and reductions, principally the former, in the levels of the commodity rates—but the outstanding features of the prior development of each are still prominent.

"A situation somewhat similar to that within the South existed in connection with the rates between the two territories. The class rates were high compared with those within the North; in fact, from and to a large part of the North they were combinations on the river crossings or other border points. The greater part of the traffic which moved at these class rates consisted of high-grade manufactured articles produced in the North and consumed in the South. Only a small part of the north-bound traffic was subject to the class rates, low commodity rates being applicable on the bulk of that traffic. In order to encourage the development of mining and manufacturing in

the South the southern carriers early began the practice of establishing from southern producing points to the markets of the North, on articles which were competitive with those produced in the North, rates on or approximating the level of the rates applicable on like articles within the North."

These differences in the rate structures in the North and in the South and especially the relatively much higher freight rates on raw materials and low-grade articles in the North than in the South are illustrated by Witness Bell's Exhibit No. 164 as revised by Exhibit 224. This exhibit compares the rates or distance scales in the North and in the South for the transportation of such raw materials and low-grade commodities as pulpwood, logs, lumber, pig iron, scrap iron, brick, lime, sand, gravel and crushed stone, fertilizer, and sulphuric acid. Taking pig iron, for example, which is of course an important raw material for many manufactured articles, the following table, based upon the exhibit, shows illustrations of the rates in the South and in the North for similar distances:

PIG IRON RATES

From	To	Miles	Rate per ton
Buffalo, N. Y.	Elmira, N. Y.	148	$2.50
Birmingham, Ala.	Columbus, Ga.	159	1.65
Bethlehem, Pa.	Baltimore, Md.	161	2.92
Birmingham, Ala.	S. Pittsburg, Tenn.	164	1.71
Johnstown, Pa.	Friendship, N. Y.	212	4.30
Birmingham, Ala.	Rockwood, Tenn.	213	2.20
Buffalo, N. Y.	Pittston, Pa.	253	4.58
Birmingham, Ala.	Knoxville, Tenn.	254	2.20

Some other examples which illustrate the extent to which the higher class rates in the South are offset by lower rates on low-grade freight in the South than in the North are the following:

Commodity	Distance Miles	Rate per ton South	Rate per ton North	
Pulpwood	50	$ .62	$1.40[1]	$1.60[2]
	100	.85½	1.70[1]	1.90[2]
	300	2.00	2.80[1]	3.00[2]
Logs	100	1.30	$2.20	
	400	3.00	4.00	
Lumber	200	2.90	3.60	
	300	3.80	4.40	
Scrap Iron	100	2.34[3]	2.71[4]	
	200	3.27[3]	3.70[4]	
Brick	116	1.70[5]	2.15[6]	
	337	3.00[5]	4.24[6]	
	511	4.00[5]	4.95[6]	
	691	4.80[5]	5.57[6]	

The extent to which the South has the benefit of lower raw material rates is further indicated by page 8 of Witness Kerr's Exhibit 16, from which it appears that if the revenue per ton paid to the carriers in the North for the transportation of products of mines and products of forests in carloads were made applicable to the transportation of these commodities in the South, it would result in an increase in the total freight charges paid by the southern shippers of approximately $18,000,000. Moreover, even if the per ton-

[1] Single line haul.
[2] Joint line haul.
[3] Per ton of 2,240 pounds, min. weight 50,000 pounds.
[4] Per ton of 2,240 pounds, min. weight 44,800 pounds.
[5] Scale rates for distance.
[6] Specific rates.

mile figure in official territory for the transportation of manufactures and miscellaneous in carloads were made applicable in Southern territory (which would include the class rates as applied to carload shipments and manufactured articles in the South) there would actually be an increase in the total freight charges of the Southern railroads, based on their traffic for 1939, of $397,133. This is explained by the fact that included in the manufactures and miscellaneous list are various low-grade commodities which move in great volume in the South and upon which the South has lower rates than obtain in the North. These were dealt with by Witness Bell.

A somewhat more detailed computation, based upon a greater breakdown of total freight by commodity groups was made by Witness Kennedy at sheets 2 to 5 of his Exhibit 18. Roughly, his method in this computation was to apply to the tonnage handled in the South for the year 1939 under each commodity description the computed revenues per ton-mile of the Eastern district. This shows that on pulpwood the application of the official ton-mile revenue would increase the earnings of the Southern railroads $2,433,037. In the case of pig iron the increased freight charges which Southern shippers would have to pay under the Northern level would be $427,473; on phosphate rock the increase would be $2,587,027; on products of forests $1,498,589; on cement it would amount to $413,136; on brick to $108,255; on copper ingots and pig copper $287,066; on zinc ore and concentrates $352,004; and on logs the increase would be $2,127,421.

Dr. Edwards confirms the existence of these lower rate levels in the South on raw materials and low-grade

freight when, on page 18 of his Exhibit No. 196, in answer to Mr. Kerr's testimony that the application of the Eastern rate level to the South would, on the basis of 1939 traffic, have reduced the revenues of the southern carriers by $39,812,189, he remarks that if Mr. Kerr had added up his gains and losses by individual commodities, by which he plainly means that if he had applied the higher northern level of rates in instances where the southern level is now substantially lower, the net loss to the southern roads would be only $1,509,766.

In view of these facts, the circumstance that average computed costs may appear to be approximately the same in the North and in the South is no indication that the class rates should be the same unless the low rates on raw materials are also made the same.

These differences in the patterns of the rate structures in the North and in the South and the enjoyment by the South of substantially lower rates on raw materials than those obtaining within the North have an important bearing upon the issues in this proceeding in several respects. Thus, as is pointed out elsewhere herein, they show the unsoundness of the South's contention that it is discriminated against or injured merely because the class rates are higher in the South than in the North when its industries have lower rates on their inbound raw materials. They indicate, also, the unfairness of a demand for parity of class rates under the plea of equality, when this would leave northern manufacturers with their higher rates on inbound raw materials to their plants. The point here, however, is that in the light of these differences in the rate structures the computations which produce ap-

proximately equal average costs of transportation in the two territories can afford no proof that the rates on class rate traffic alone are unlawful because they are not the same, mile for mile, in both territories, when there are great differences in the rate structures as reflected in the disparities between the levels of the rates on raw materials.

Indeed, with the low rates on raw materials in official territory substantially higher than in southern territory, the class rates applicable to manufactured goods must be lower if the same average costs are to be met and the same average revenues are to be produced. In other words, so long as the rates on raw materials in the South are lower than the rates on raw materials in the North a finding that the average computed transportation costs are approximately the same in the two territories would require a conclusion that there should *not* be parity of class rates and that the class rates should continue to be lower in the North than in the South.

C. *The evidentiary value of computed average costs as a measure of the proper relationship between the levels of the class rates in the several territories is further diminished by the great differences in the characters of traffic in the several territories.*

Not only are there these marked differences in the patterns of the rate structures, which must produce the total revenues necessary to maintain the transportation machines and defray the total and average costs for each territory, but there are also great differences in the kinds and volumes of freight to be transported,

which differences still further deprive comparisons of computed average costs of any probative force as to how the relative levels of rates applicable to a small proportion of the total traffic should compare.

For the purpose of showing the manner in which the transportation burden is distributed in the different territories, Witness Bell made a detailed analysis of the traffic handled in these territories and the proportion in which each class of traffic in each territory contributed toward the total transportation burden in that territory (Exs. 164, 165, 166, 224).

To begin with, the total volume of all traffic and the revenue received therefrom are far greater in the several regions which roughly comprise official territory than in any of the other regions involved herein (Ex. 165, p. 2).

More than this, Exhibit 165 shows that there are two particular classes of traffic, to wit: coal and coke and iron and steel articles, which both move in much greater volume and also constitute a far greater proportion of the total tonnage of all freight handled within official territory than they do in the South. The transportation of these huge volumes of this important freight provides a far greater amount of revenue, both absolutely and relatively, than does their transportation within the South.

Analyzing the figures briefly, Exhibit 165 shows that approximately 95 per cent of the coal and coke produced in the United States originates east of the Mississippi River, the tonnage originating in official territory, including the Pocahontas district, constituting 82.23 per cent as compared with only 12.9 per cent originating in the South (R. 3576, 3581). Even exclusive of the

Pocahontas district and New England, the coal and coke originated in official territory represented 46.19 per cent of all traffic originated and the coal and coke handled constituted 47.02 per cent of all traffic handled (Ex. 165, p. 2).

It is generally conceded that coal and coke traffic is the most economical and the most profitable to handle, as witness the comparisons previously given of the revenue results of the roads which had a large volume of coal traffic with those which did not. Obviously, therefore, with a backlog of coal and coke traffic over three times that of the railroads in the South and seven times that of the railroads in the Southwest, the official carriers should be in a position to maintain lower class rates and lower rates on manufactured articles.

Moreover, as has been previously pointed out the coal traffic is more diffused and more evenly shared by the major railroads of official territory, whereas in the South not only is the total volume of coal much smaller but it is largely confined to only four roads, the Clinchfield, Illinois Central, Southern and L. & N. This important revenue producing back-log is therefore largely lacking to the other southern carriers.

Of freight other than coal and coke, the carriers in official territory in 1939 handled 481,000,000 tons as compared with 143,000,000 tons handled by the railroads of the southern region and only 94,000,000 tons by the southwestern lines. Included in their 481,000,000 tons, the carriers in official territory had a tremendous volume of iron and steel traffic which is not enjoyed by the railroads of the South, and in view of the acts of nature in locating ore, coal and limestone

deposits, cannot become available to the southern lines in equal quantities.

Pages 47 to 50 of Exhibit 165 contain a detailed analysis of the movement of iron and steel articles within southern territory and the central, eastern and Great Lakes regions of official territory. The following figures show the tonnages of these articles originated and handled in the respective territories, the revenues received therefrom and the relations of such tonnages and revenues to the total tonnages and revenues exclusive of those relating to coal and coke.

	Iron and steel tonnage originated	Per cent of total tonnage originated (all traffic)	Iron and steel tonnage handled	Per cent of total tonnage handled—(all traffic)	Iron and steel Revenue	Per cent of total freight revenue—all traffic
Southern Region	3,051,242	3.9154	7,346,783	5.1102	18,737,606	5.0199
Central Eastern and Great Lakes Regions	41,254,083	20.9061	62,583,011	15.3254	133,268,720	14.6562

Page 42 of Exhibit 165 shows that the tonnage of iron and steel articles originated in 1940 in eastern trunk line and central freight association territories constituted 83.86 per cent of the total tons of iron and steel articles originated in the United States, as compared with only 6.65 per cent of the total which originated in the South.

The greatest production of iron and steel articles in official territory is in the order named in western Pennsylvania, eastern Ohio, eastern Pennsylvania, Indiana and Illinois. There is a lesser production in the Buffalo District, western Ohio, West Virginia, Maryland and Delaware. Many of the largest steel mills are located on the Great Lakes and navigable rivers. All of these sections are in close proximity to the greatest reservoir of coal in the United States

and limestone and dolomite are also found in abundance nearby. The mills in western Pennsylvania, West Virginia, eastern Ohio, Buffalo District, Indiana and Illinois obtain iron ore by water via the Great Lakes or by a comparatively short rail haul. The iron ore affords a return loading for cars in which tremendous quantities of coal are transported to the Great Lakes for transshipment (R. 3594-95).

Moreover, not only does official territory have the raw materials for a great steel industry, but the greatest consuming markets and areas for manufactured iron and steel are also comparatively short distances from the mills. In *Iron and Steel Articles,* 155 I. C. C. 517, the Commission found that 75.6 per cent of the total domestic consumption of rolled steel in the United States was consumed in official territory. With the exception of Michigan, the five states in official territory which are first in point of consumption are also the heaviest producers (R. 3595-96).

These great volumes of coal and coke and of iron and steel originating and handled in official territory provide the lines in that territory with huge sources of revenue that are not available in the same degree to the railroads of the South. Inevitably this affects both the theories of the rate structures and the levels of the rates established for class rate traffic.

Other commodities of which there is a larger movement in official than in southern territory are petroleum and petroleum products, automobiles (R. 3599, 3604; Ex. 165, pp. 26, 29), and newsprint (R. 3606). Still another group of commodities moving in larger volume in official territory and relatively small volume in the South consists of flat glass, other than plate,

glass bottles, jars and jelly glasses. Approximately 90 per cent of the glass and glass containers are manufactured in western Pennsylvania, northern West Virginia, eastern and middle Ohio, Illinois and Indiana, where an abundance of coal, glass, sand, limestone and the sodas, the chief raw materials, are found in juxtaposition within or adjacent to the producing areas. In addition the production of heavy commercial chemicals, including the commercial sodas used in almost every line of manufacture, has been largely in official territory, not only because it is the greatest consuming territory but also because salt and coal, hydro-electric power or gas are found in close proximity to one another, which is not true in the South (R. 3607).

Quite different from the facts as to the manufactured and miscellaneous products moving within the two territories are those with regard to low-grade heavy loading freight, statistics concerning which appear at pages 51 to 54 of Exhibit 165.

The first group of commodities there listed comprises ten of the lowest grade articles handled in transportation. They are gravel and sand, stone, broken and ground, phosphate rock, furnace slag, iron ore, fuel wood, pulp wood, logs, posts, poles and piling, and common brick. The second group consists largely of manufactured goods which come within the category of low-grade tonnage. The commodities included in this group are: lumber, shingles and lathes, box, crate and cooperage material, veneer and build-up wood, railroad ties, products of forests N. O. S., products of mines N. O. S., brick, N. O. S., building tile, common lime, cement, fertilizers, N. O. S., cottonseed, crude petroleum, and asphalt.

The following figures abstracted from pages 52 and 54 of Exhibit 165 show the relative importance of these two groups of commodities to the railroads in the southern and in the central eastern and Great Lakes regions:

		Southern Region	Central Eastern and Great Lakes Regions
Tonnage Handled	Group 1	30,660,225 [1]	20,686,047 [1]
	Group 2	28,008,805	76,307,426
Total		58,669,030	96,993,473
Per cent tonnage handled of total tonnage handled—all traffic *	Group 1	21.32 [1]	5.06 [1]
	Group 2	19.48	18.68
Total		40.80 [1]	23.75 [1]
Freight Revenue	Group 1	$24,777,355 [1]	$ 15,491,178 [1]
	Group 2	$56,037,595	$103,971,033
Total		$80,814,950	$119,462,211
Per cent freight revenue of total freight revenue—All traffic *	Group 1	6.63 [1]	1.70 [1]
	Group 2	15.01	11.43
Total		21.65 [1]	13.13 [1]

Similar figures are contained in Exhibit 224 which was a revision of page 18 of Exhibit 164.

As Mr. Bell testified, and as the foregoing tables and the statistics in the exhibits themselves demonstrate, these facts are

> "important because with the low-grade heavy-loading commodities constituting a greater proportion of the total traffic of the South, on which

* excluding coal and coke.
[1] excluding iron ore.

> the railroads in the South have elected to accord relatively lower rates, these railroads must, of course, maintain a higher level of rates on their much smaller proportion of the higher grade manufactured commodities" (R. 3609).

A further analysis showing the differences between the compositions of the freight moving in southern and official territories is contained on page 46 of Exhibit 165. Section 1 of page 46 sets forth twelve manufactured articles, which are in the nature of low-grade heavy loading commodities, on which the southern carriers maintain rates at a level generally the same as or lower than that of the rates in official territory (R. 3608).

These differences in the kinds and volumes of freight available to the carriers in the North and in the South are sufficient in themselves to justify the conclusion that the carriers are in different situations and must be influenced by different considerations in making their rates for the movement of class rate traffic. Even if the costs of moving class rate traffic were the same in the two territories the net revenue per hundred pounds required therefrom would be bound to be different.

In short, with their much larger tonnages of coal, coke, iron, steel, automobiles, glass and newsprint paper, and their higher rates on low-grade raw materials and low-grade manufactured articles, the carriers in official territory are inevitably in a position to maintain a lower level of class rates for the transportation of high-grade manufactured articles than the Southern carriers, in the light of their traffic conditions, have seen fit to maintain.

POINT X

The record contains no evidence which would support a minimum rate order requiring that uniformity of class rates be accomplished by increasing the level of the class rates in official territory.

There would be three ways of achieving uniformity of class rate levels: by raising those which are lower, by reducing those which are higher, or by both increases and reductions.

The interests on whose behalf this brief is filed have no ulterior purpose to keep the class rates within the South at their present level. We do insist, however, that to accord the South both intraterritorially and interterritorially the official territory class rate level while permitting southern industry to secure its raw materials on the basis of the lower rates now existing in the South would, instead of achieving parity, produce a substantial rate preference for the South and subject northern communities and manufacturers to unjustified discrimination.

Moreover, the Commission cannot fail to take into consideration the effect upon the revenues of the southern carriers of a reduction to the official territory level of the class rates within the South and interterritorially so long as offsetting increases are not made in the commodity rates and the rates on raw materials within the South. Dr. Edwards testified that a restatement of Witness Kennedy's Exhibit 18 indicated that "transplanting the Eastern rate level to the South would effect an approximate loss of $23,500,000" in the revenues of the southern railroads (Ex. 196, p. 18). Dr. Edwards' own Exhibit 195 indicates a reduction in revenue for the southern carriers of $21,992,556. Witnesses for the South, for the most part, denied any desire to have the freight rates within official territory increased and practically every witness for the complaining Southerners who was asked the question expressed opposition to a minimum rate order. Nevertheless, the figures above referred to, coupled with other figures in the record in regard to the net earnings of the southern railroads, create at least a presumption that parity of class rates, including rates related to class rates which must ultimately be affected, cannot be accomplished without an increase in the class rates in official territory.

Apart from the fact that no one, even among the southern complainants, seeks a minimum rate order, we submit that there is absolutely no support in the record for an order which would require an increase in the level of the class rates within official territory or for a decision which could be satisfied only by such an increase. To increase the class rates within official territory would amount to an increase in the cost of doing most manufacturing business within the North, including business with which the South could never in any way become competitive. It would mean an increase in charges on a substantial portion of railroad traffic in the North in order to accomplish parity of rates where southern traffic is relatively small in volume. Furthermore, an increase in the class rates within official territory would probably not benefit the South in the long run because, while achieving mile for mile parity, such an increase would increase the interterritorial rates and thereby raise the South's cost of selling in the North, an increase which in view of the generally

greater distances to common markets from southern producing points than from producing points in official territory would be decidedly adverse to the competitive ability of the South.

The record affords an indication, however, that some of the motor truck carriers in official territory will ask the Commission, by a minimum rate order, to prescribe increased rates within official territory on less-than-carload traffic. Such a demand, of course, will reflect two motives: first, to restrict the freedom of the railroads to compete with the trucks; and, second, to set a higher level of railroad rates as an umbrella to enable the truckers to increase their own charges. It is submitted, however, that the same reasons which argue against the entry of any minimum rate order require the conclusion that there is no justification for a minimum rate order increasing the l.c.l. rates alone.

There is no proof in the record to justify a finding that the present l.c.l. rates in official territory are not remunerative. The only evidence which might be referred to in support of such a contention is chart 5 of Dr. Edwards' Exhibit 13, in which he attempts a comparison of class rates with so-called l.c.l. costs computed by him. The comments which have previously been made regarding the validity of Dr. Edwards' cost computations and the deductions which can properly be drawn therefrom are applicable here, but it is further important to note that Dr. Edwards, for the purposes of his computations of l.c.l. costs, has assumed an average loading of l.c.l. freight in box cars of only six and one-half tons. The record here shows, however, that in the case of the Pennsylvania Railroad, for example, the average loading of less-than-carload

traffic in 1942 was 10.15 tons and it was testified that based upon O. D. T. figures for October, 1942 the average loading of l.c.l. traffic for all official territory roads in October, 1942 was 10.61 tons. Exhibit 215, presented on behalf of the Eastern carriers, comparing l.c.l. class rate scales with computed costs for loads of 8, 10, and 12 tons per car as well as 6½ tons per car, shows that the rates are compensatory.

Therefore, we submit that there is no basis in the record in this proceeding for a minimum rate order either as to the class rates as a whole or as to the class rates when applied to less-than-carload traffic.

POINT XI

So long as there are differences in the levels of the class rates within the several territories, the existing interterritorial class rates cannot be found unlawful. The destination rate theory has no justification.

If, as we believe the Commission must here find, there is no basis for ordering mile for mile parity of class rates within the North, the South and the Southwest, there is, of course, a problem of how the class rates for transportation from one territory to another should be adjusted to different intraterritorial levels. Speaking broadly, there are apparently two alternatives. Either the interterritorial rates may be upon the same level mile for mile as the rates within one territory or the other or they may be a compromise between the two, based roughly upon the relative extent of the transportation performed in each territory.

The latter roughly describes the interterritorial class rate structure as it exists at the present time. It is

submitted that it cannot be held unlawful. Of course, it is possible to conceive of different formulae for determining how the compromise may be achieved. One formula may be more advantageous to points near the border and another formula may favor more distant points. How some different formulae would work from those upon which the present interterritorial class rates are predicated is indicated by Section D of Witness Bauman's Exhibit No. 161. This shows how rates which would result from the application of the formulae prescribed by the Commission in *North Carolina Corporation Commission* v. *Akron, Canton & Youngstown Ry. Co. et al.*, 213 I. C. C. 259; *Commonwealth of Kentucky, et al.* v. *Ahnapee & Western Ry. Co., et al.*, 213 I. C. C. 297; and *East Tennessee Border Traffic Association* v. *Akron, Canton & Youngstown Ry. Co,. et al.*, 214 I. C. C. 316, between representative points in the South and the North would compare with the present rates.

On the whole, it is submitted that when tested by formulae which the Commission has prescribed in the other cases referred to, the existing interterritorial rates cannot be found to be unlawful. Certainly there is no other evidence in the record indicating on what different basis the interterritorial rates should be constructed except for the demand for mile for mile parity.

In the *Southern Governors Case,* it was urged that rates should be made upon what has come to be known as the destination rate theory; namely, that the interterritorial rates to a market in a given territory should be upon the same level mile for mile as the rates within the territory in which the destination market is located. This destination rate theory assumes the existence of

different rate levels in different territories. In the present proceeding, as in the *Southern Governors Case,* the demand of the South concerns itself with rates for the movement of manufactured articles into official territory. As has been pointed out elsewhere, the South does not claim to be able to support the manufacturing industries which it seeks to attract, but its purpose is rather to attract manufacturing industries to use the raw materials of the South and provide employment in the South at the expense of the purchasers of the North. Therefore, all of the economic argument advanced in support of the southern case is addressed to the rates from the South to the North rather than the rates within the South. However, the plea for parity of class rates from the South to the North with the rates within the North rests in the present proceeding upon a demand for a uniform basis of class rates throughout the territory east of the Mississippi River, and presumably for this reason the destination rate theory has not been expressly invoked. Indeed, the economist of the T. V. A., who was the principal exponent of the economic theories upon which the southern demand for rate parity rests, expressly disavowed any claim that the destination rate theory should be applied. As spokesman for the T. V. A. in the present proceeding, he disagreed with a treatise previously publicized by the T. V. A. which had advocated the destination rate theory and which apparently had done much to stimulate the *Southern Governors Case* or lend it support (R. 1463).

Nevertheless, although the destination rate theory so far in this proceeding has no advocates, it cannot be completely ignored. We submit, however, that the

destination rate theory is utterly unsound and without justification in any factual considerations upon which the Commission may order changes in rates. Under the destination rate theory, the rates would be on the official territory level for movements from the South to the North and on the southern territorial level for transportation from the North to the South. Obviously, such rate differences can have no basis either in costs, operating conditions, or in traffic and rate-making factors, such as the distribution of the traffic burden. If costs could be controlling, they would require the same level of rates in both directions. So far as traffic density is concerned, the same is true. The relative proportions of total traffic, represented by large volumes of coal, coke, iron and steel, are the same whether shipments are moving northbound or southbound. The rate patterns, that is, the proportions of total revenue which, in accordance with their rate schemes, the carriers expect to obtain from different sorts of freight, are the same in the case of freight moving from the South to the North as in the case of freight moving from the North to the South.

Consequently, the destination rate theory represents an out and out attempt to make the attraction of industry and a desire to reach a particular market, the controlling element in rate-making, regardless of transportation factors. Under the law this cannot be done.

POINT XII

The record in the present proceeding, being based largely on statistics for the year 1939, will not support an order requiring a change in rates for the future.

In *Atchison etc. Ry. Co.* v. *United States,* 284 U. S. 248 the Court held invalid an order of the Commission prescribing rates within Western trunk line territory on the basis of a record concluded in 1928. It did this on the ground that after the record was closed there had occurred, as a result of the depression of 1929, such a change in conditions that the facts disclosed by the evidence in the record could not be accepted as proof of the facts for the future period in which the Commission's order was intended to be operative. The Court said (p. 260):

> "There can be no question as to the change in conditions upon which the new hearing was asked. Of that change we may take judicial notice. It is the outstanding contemporary fact, dominating thought and action throughout the country. As the Interstate Commerce Commission said in its recent report to the Congress, 'a depression such the country is now passing through is a new experience to the present generation.' The Commission also recognized in that report 'the very large reductions in railroad earnings which have accompanied the economic depression,' and stated that 'the chief cause of these reductions has been loss of traffic.' For 'in such depressions the railroads suffer severely. Their traffic is a barometer of general business conditions.'
>
> "It is plain that a record which was closed in September, 1928—relating to rates on a major de-

scription of the traffic of the carriers in a vast territory—cannot be regarded as representative of the conditions existing in 1931. That record pertains to a different economic era and furnishes no adequate criterion of present requirements."

The Commission will, of course, take judicial notice of the fact that since July, 1939, when it instituted its investigation, there has arisen a world war in which this country has been involved which has changed the life of the nation far more than it was ever changed by the market collapse of 1929. Not only have existing channels of commerce been given over to the movement of war materials, not only has the production of a vast number of manufactured products which formerly constituted a large part of the commerce of the country been discontinued in favor of the production of war supplies, but the intensive application of the best minds of the country to the problems of the war has caused the development of many new materials and new methods of manufacture which, when the war is over, may completely change the economic structure of the country so far as peacetime conditions are concerned. One striking example is the great development of plastics and their uses. This development had begun before the war but has been tremendously accelerated by war needs. It is interesting to note that a witness for the West testified on the record here that the Middle West anticipated that with its production of grains there would be a large plastic industry in the Middle West whose products might well supplant articles now made from iron and steel (Witness Christianson, R. 2332). Then, too, the war has brought about an enormous growth of aviation as a means of transporting both

passengers and freight and what this change may mean to the transportation economy of the country in peacetime it is impossible to foretell.

Railroad executives whose business it should be to judge the future for rate-making purposes testified that it was absolutely impossible to foretell what the post-war conditions would be (Capron, R. 839, 899; Robinson, 932, 933).

Under these circumstances, we respectfully submit that a record which contains no evidence as to transportation, economic and competitive conditions except as they existed in the year 1939 cannot possibly afford a basis for an order prescribing freight rates for the post-war period.

POINT XIII

Miscellaneous Matters.

There are, of course, many other matters in the proceeding which could be discussed, but it is submitted that what has been said should sufficiently demonstrate that there is no basis here for an order requiring a general revision of the class rates and the establishment of a uniform level of class rates throughout the eastern part of the United States. There are, however, two subjects which invite passing mention.

A. *Western Trunk Line Rates.*

As we said at the beginning of this section of the brief, the discussion has been directed largely to the question of rate levels as it arises between the South and the North. What is said is generally of equal application as between official territory and the West.

There has been no such vigorous demand from the West for a parity of class rates as has been voiced by the Southern Governors. So far as western trunk line territory is concerned, this proceeding has been largely the occasion for the presentation of opposing contentions on local sectional issues within the West. Only in the case of a group of states bordering official territory on the West has there been any real attempt to present a case for rate parity with official territory.

These several western states have presented somewhat elaborate looking maps and statistical exhibits (Exs. 119 and 120), from which they ask the Commission to draw the inference that from the standpoint of industrial development, density of population, and other commercial and transportation factors they should really be grouped with and included in official classification territory rather than western trunk line territory. However, it is submitted that these exhibits do not support the contention. What the exhibits do show is that these states are largely agricultural in their economy except for sections near the borders of official territory, such as St. Louis, Missouri, and the southeastern corner of Wisconsin. Exhibit 120 shows that these limited sections do have a manufacturing development comparable with that of parts of official territory. However, these particular points are already in official territory so far as traffic to and from the East is concerned. As for the remaining portion of the states, except for a few cities in Iowa, the exhibits indicate graphically that manufacturing development is conspicuously lacking. Merely because St. Louis and Milwaukee are comparable from a transportation standpoint with other states in official territory is no reason why the boundaries of official territory should be extended to the entire states of Missouri, Iowa and Wisconsin.

So far as the northeastern states and the commercial interests on whose behalf this brief is filed are concerned, they have no objection *per se* to these Western trunk line states securing a lower level of rates if the facts warrant it. However, they do oppose any change in this proceeding of the boundaries of official territory for the reason that the record here utterly fails to afford any transportation reason for such a change, and if the Commission were to begin to remake the rate map of the country, not on the basis of evidence before it as to transportation considerations but for the purpose of inducing a relocation of industry or stimulating the industrial growth of one or another region, the whole regulatory system would be destroyed.

B. *The Jensen proposal for a division of official territory.*

Witness Jensen's suggestion that the class rates within official territory should be revised and the territory itself divided, with the lowest level of rates within the middle western section and progressively higher rates in the East, was admittedly put forth as a basis for discussion only. It gained no supporters whatever during the entire course of the hearing. Its objectionable features were fully disclosed by Witnesses Hodkinson and Tannehill and their Exhibits 47 to 53 inclusive and Exhibit 58. Obviously, it runs directly counter to the contention of those who demand a uni-

form class rate level throughout the entire East. But we, too, oppose it, since it would undo the results of the Commission's labors in the *Eastern Class Rate Case* and would create all kinds of new problems of competitive relationships. It has no support in any cost or statistical data.

We mention it only that it may be remembered in order to be forgotten.

Conclusions as to Part One

For the reasons which have been discussed and in the light of the evidence or lack of evidence in the record in this proceeding, it is urgently submitted that the Commission cannot properly here find that the present class rate structure or the present class rates are unlawful because they are on different levels mile for mile in the several classification territories, and that it could not without greatly exceeding its statutory authority prescribe by order a uniform level of class rates throughout the country east of the Rocky Mountains or direct the railroads to do so.

PART TWO

(Docket 28310)

Should the Commission prescribe a uniform classification?

Statement

In its order of July 29, 1939, Docket 28310, it is stated that the Commission directed:

> "That a proceeding of inquiry and investigation be, and it is hereby, instituted by the Commission on its own motion into and concerning the description, minima, and ratings provided in said consolidated freight classification, with a view to determining whether they, or any of them, are unjust, unreasonable, unduly prejudicial, unduly preferential, or otherwise unlawful, and to making such findings and order or orders as may be proper in the premises."

The Commission is so thoroughly familiar with the territorial application and scope of the three major classifications referred to in its order that it would be superfluous here to recount that information.

There is nothing in the Commission's order of July 29, 1939, to indicate that the Commission had in mind the question of a uniform freight classification for application within and between all sections of the United States. However, by its subsequent order of January 9, 1940, as amended by letter of July 2, 1940, the following query was addressed to the respondents:

> "4. Have you under consideration any proposal or plan for completely unifying or for promoting

greater uniformity among the three major classifications? If so, describe it."

Various witnesses from the South, Southwest, and western trunk line territory, presumably as part of their demand for parity of rate levels, were loudly vocal in their insistence that the Commission should prescribe a uniform freight classification for country-wide application. Moreover, questions from the bench during the course of the hearings indicated that the Commission is probably giving serious thought to the propriety of such a classification.

Hence, it appears that the major issues in Docket No. 28310 are whether a uniform classification should be ordered, and if so what it should be and by what changes or in accordance with what formulae it should be achieved.

POINT I

The record here does not justify an order prescribing a uniform classification.

The purpose of classification is, of course, to avoid the necessity for publishing millions of individual rates on all the multitudinous articles transported from point to point throughout the country, to simplify rate publication and, by indexing, to afford a ready means of ascertaining applicable transportation charges. To the extent, therefore, that the classifications become too involved and complicated, they tend to defeat their primary purpose.

There can be no doubt that there is much to be said in favor of a single uniform classification applicable throughout the country. On the other hand, however,

it is possible to exaggerate the practical difficulties resulting from the existence at the present time of three major classifications. Thus although there are three classifications, they are published in a single volume. Moreover, it is doubtful whether the size of this volume could be materially reduced if there were only one classification because descriptions have been unified and the differences in the classification ratings appear only under the rating columns where there are three figures instead of one. The chief problem arising from the existence of three classifications is in knowing which is applicable in the case of a movement from one territory to another, but this problem cannot often be a serious one to an experienced traffic man. There may be some delays and burden in connection with applications for changes in classification ratings if it becomes necessary to make application to each of the several classification committees.

But whether the existence of three classifications produces difficulties which are large or small, there is an obvious appeal in the idea of a single uniform classification.

Progress toward such a uniform classification, however, has been slow, which would seem to indicate that there must be difficulties in the way of achieving uniformity. For if there were no serious problems in the way of a uniform classification it should have been accomplished by the Director General when all of the railroads were under Federal control. At that time, although an important step in the direction of uniformity and simplification was taken in the production of the consolidated classification which combined the three major classifications in one volume with uniform

rules and commodity descriptions and with variations only in the classification ratings there were found to be various obstacles to complete unification. *Consolidated Classification Case,* 54 I. C. C. 1; *Sharfman, The Interstate Commerce Commission,* Vol. I, page 166.

Nevertheless, however desirable a single uniform classification may be, the fact is that there is no basis in the present record for prescribing one.

All of respondents' classification witnesses were unanimous in the belief that, from a practical standpoint, it is not possible to completely unify the ratings in the three major classifications without unwarranted reductions in many important ratings in one or more of the territories, with resulting reductions in the carriers' revenues, and without serious interference with the customary and natural flow of commerce under existing ratings. No respondent carrier advocated complete unification of the various ratings.

Some questions of detail as to the classification issues were voiced during the hearings, such as whether there should be a separate classification for less-carload than for carload freight and whether there should be a uniform classification for both railroads and motor carriers. A few suggestions have been put forth as to formulae by which classification ratings should be arrived at. See, for example, the testimony of Witness Waring (R. 2845-2949). But there is a complete lack of any comprehensive proof on the classification ratings as such.

Obviously, the very question whether there should be a uniform classification arises from the lack of uniformity as between the three classifications at the present time. This means that as to various commodities there are differences in the classification ratings to which they are assigned and it also means that the classifications themselves are, to some extent, constructed on different principles and that there are different relationships between the several classes. These differences obtain more extensively in the lower classes than in the upper.

From the existence of these differences, it follows that the attainment of uniformity involves changing the relationships between the ratings on various commodities in one territory or another. If there were but a few minor changes to be made in order to achieve uniformity, the solution of the problem would obviously not be difficult. Witness Bell's Exhibit 167, however, which is probably the most complete analysis of the classification ratings has ever been made shows how multitudinous are the variations in the ratings as between the several territories and how many and how substantial are the changes which would have to be made in order to achieve uniformity. Pages 27 and 29 of that exhibit deal with the less-than-carload ratings, and shows that there are 8,062 such ratings that are the same in all three classifications, but that there are 2,087 ratings in official territory where the ratings of the commodities in the western or southern classifications or both are different. Pages 25, 26 and 28 of the exhibit deal with the carload ratings, as to which there is even less uniformity. There are 2,970 carload ratings which are the same in all three classifications, but there are 3,324 where southern and official are the same and western is different, 5,356 where official and western are the same and southern is different, and 4,365

where southern and western are the same and official is different.

Mr. Bell's Exhibit 168 is designed to show further the changes in ratings which would be involved in achieving uniformity of classification. Thus, by way of illustration, taking fifth class which is of great importance in official territory, the exhibit shows that in the official classification there are 2,710 fifth class ratings. Fifth class in official territory is 35 per cent of first, which is the percentage relationship of seventh class to first in the southern classifications. If the official classification relationship were taken as the one to become "uniform" there is not a single carload rating in the southern classification corresponding to the 2,710 items which would not have to be changed upward or downward. The largest group to be changed would be those now rated sixth class, which in the South is 40 per cent of first. Here there are 1,646 ratings which would have to be reduced 5 per cent. On the other hand if this sixth class group in the South were taken as the focal point toward which the others should be unified, the ratings of 2,710 items in official territory would have to be changed from 35 to 40 per cent of first-class.

It is apparent from the foregoing and from the much more detailed data contained in the exhibits that many and considerable changes must be made in the classification ratings of individual commodities and consequently in the relationships of the ratings on these commodities to the rates on other commodities in the various territories before uniformity can be accomplished, and there simply is not the evidence in the record on the basis of which the Commission can de-

termine which ratings should be changed and in what respects the present relationships between the ratings of different commodities are unlawful.

In numerous decisions the Commission has indicated the factors which it must consider in determining the classification ratings for commodities and the relationships which should exist between the rates on different commodities as produced by the classification.

Witness Fyfe included in his Exhibit 69 quotations various expressions of the Commission summarizing the factors which the Commission has considered controlling in prescribing classification ratings. Some of these quotations are the following:

> "In grouping articles together in a class for the purpose of fixing rates upon these articles several considerations are usually deemed by the carrier of a very controlling nature. Among these may be mentioned bulk and space occupied, value, hazardous and extra-hazardous freight, liability to waste or injury in transit, weight, or the like."
>
> *Pyle & Sons* v. *E. T. V. & G. Ry. Co.*, 1 *I. C. C.* 465, 473.

> "Both the market value of the commodities and the volume of business they furnish to carriers are proper elements to be considered in the classification."
>
> *Warner* v. *N. Y. C. & H. R. R. Co.*, 4 I. C. C. 32, 39.

> "That a rate maker may, and in fact should, take into consideration such controlling conditions, in preparing a classification, as bulk and space occu-

pied, the weight of the article as compared with its dimensions, its value, whether it can be so loaded into a car to make a full carload and whether as a matter of fact it is hauled in carloads as well as in less carloads."

Harvard Co. v. *Pennsylvania Co.*, 4 I. C. C. 212, 223.

"For convenience in making transportation rates and charges, freight is arranged and put into different classes according to expense of carriage, bulk, value, risk, competition and other considerations affecting the cost and value of the transportation service."

Coxe Bros. & Co. v. *L. V. R. R. Co.*, 4 I. C. C. 535, 538.

"The elements of bulk, weight, value and character are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification."

Page v. *D. L. & W. R. R. Co.*, 6 I. C. C. 548, 565.

"It has been repeatedly claimed by carriers and repeatedly held by the Commission that in the forming of a classification bulk, value, liability to damage, and similar elements affecting the desirability of the traffic should be considered, and that analogous articles should ordinarily be placed in the same class * * *. Manifestly in determining what freight rates shall be borne by different commodities an attempt should be made to obtain a fair relation between those commodities, and a classification which utterly ignores all considerations of this kind or which utterly fails to give due

weight to such considerations is unjust and unreasonable."

Myer v. *C. C. C. & St. L. Ry. Co.*, 9 I. C. C. 78, 83.

"In a classification such as the official, which contains but six general classes, it is manifestly impossible to bring together in each class only such articles as resemble each other in the elements of character, use, value, volume, bulk, weight, risk and expense of handling, which have so often been referred to as governing conditions in freight classification. Besides these general considerations affecting classification, competition is often an important factor. Such competition includes not only that between carriers, but also that of a commodity produced in one section with the same commodity produced in another section, and sometimes the competition of one kind of traffic with another."

National Hay Ass'n. v. *L. S. & M. S. Ry. Co.*, 9 I. C. C. 264, 307.

"Freight classification is based upon relations which commodities bear to each other in such respects as character, use, bulk, weight, value, tonnage or volume, risk, cost of carriage, ease of handling, and controlling conditions caused by competition."

Procter & Gamble Co. v. *C. H. & D. Ry. Co.*, 9 I. C. C. 440, 482.

The foregoing were all early decisions which laid the groundwork and established the underlying principles on the basis of which the classification ratings have

subsequently been established and adjudicated. In later years, both competition of different commodities with each other and competition as between carriers has also been increasingly regarded as an important classification element. *Hires Condensed Milk Co.* v. *Pa. R. R. Co. et al.*, 38 I. C. C. 441, 447; *McCrory Stores Corp.* v. *Director General et al.*, 55 I. C. C. 423, 424; *Wool Rates Investigation*, 91 I. C. C. 235, 249-252.

There is no evidence in the present record regarding any of the foregoing factors with respect to any commodities. And this is serious because in many instances shippers may be greatly affected by changes in their ratings as compared with the ratings existing for some other commodities with which they may be in competition. Certainly, therefore, such changes should not be brought about without hearing the shippers who would thus be affected.

It is true, of course, that the Commission has given everybody an opportunity to be heard. It was stated, however, so far as shippers of New York State were concerned that the reason representatives of individual industries that might be affected by changes in the classification have not come forward to present evidence is that their time and energies are consumed by the war demands, and that however serious for them in the future changes in the classification ratings may be, they have not been able to tear themselves away from their duties to attend the extended hearings in this proceeding (R. 3187). This is doubtless true of shippers, generally, throughout the country.

Indeed, far from providing proof for a decision prescribing the numerous classification changes which would be required to produce uniformity, the evidence

in the proceeding does not afford a basis for the determination that the rating even on a single particular commodity is unlawful. In so far as this record is concerned, the Commission is without knowledge, among other things:

(a) Of the character and volume of movement in any territory, or interterritorially, of any of the individual commodities now rated in the present classifications and whether they actually move on class rates, on column rates, or on exceptions;

(b) Of the differences in the existing rate levels in the respective territories on the individual commodities named in the three major classifications;

(c) Of the classification factors and principles employed in the establishment of any one of the thousands of ratings now published in the respective classifications, or the controlling reasons for its establishment; or of the factors, principles or reasons which should be controlling in prescribing new ratings.

We respectfully submit that before the Commission can intelligently proceed with any unification of the present classification ratings, in whole or in part, and before there can be any intelligent consultation between the railroads, or between the railroads and the interested shippers, or between the railroads, the shippers and this Commission, having as an objective the unification of the classification ratings the following information must be developed:

1. The extent that the ratings on various commodities are the same or different in the three major classifications.

2. The extent that exception ratings and column ratings are accorded various commodities in the same or different territories, subterritories, and interterritorially; also the percentage relationship of each such exception to the first class rate.

3. The extent that such exception ratings and column ratings in each territory, and interterritorially, differ: (a) from the standard ratings published in the governing major classification, and (b) from corresponding exception and column ratings in other territories, and for interterritorial application from such other territories.

4. The extent the various exception and column ratings in each territory, and interterritorially, were established: (a) To meet the actual needs and requirements of the respective commodities by reason of their inherent character and transportation characteristics; (b) To meet motor carrier competition or competition with other forms of transportation.

5. A list of commodities for which there is no need for a classification rating, the entire movement of such commodities being on commodity rates.

It must be remembered, moreover, that there are literally hundreds of exception ratings and column ratings throughout each classification territory, and interterritorially, which are lower in varying degree than the standard ratings. A great volume of traffic moves on these exceptions and column ratings, or on commodity rates. All of the complications shown in

Exhibits 167 and 168 render it imperative that the basic information hereinbefore mentioned be developed before there can be any intelligent consideration either of completely unifying the three major classifications or promoting substantially greater uniformity in the ratings in those classifications. As Witness Bell testified (R. 3656):

> "I think you have got to take it by stages unless you want to entirely disrupt the whole rate structure simply for the sake of uniformity and without respect to the effect it is going to have on the movement of traffic and the abiilty of various shippers to compete with each other."

This brings us to one phase of the matter, previously touched upon, which is of grave concern to the states and other parties on whose behalf this brief is filed, viz., the effect upon the freight charges which shippers will pay of unification of the classifications through some kind of leveling or averaging process. The percentage relationships of first, second and third classes are now the same in the three major classification territories but, as is well known, in official territory the percentage relationships of the lower classes to first-class are different from those obtaining in either Southern territory or western territory. As we showed in Part I of this brief the rate structure in official territory has developed under entirely different conditions from that affecting the southern rates. The class rate level is lower and the quantity of traffic moving at class rates is tremendously greater. Moreover, a much greater volume of traffic, both actually and relatively, moves on lower rated class rates than is the case in the South or the West.

For the sake of illustration let us assume, as Mr. Bell has done (R. 3656-3658), that uniformity of classification should be brought about by increasing fifth class in official territory from 35 per cent to 40 per cent of first-class, reducing fifth class in the Southern territory from 45 per cent to 40 per cent of first-class. Based on 100 per cent for first-class in official territory, the southern first-class level being 138 per cent of the official level, and assuming first-class rates of $1.00 in official and $1.38 in southern (the southern first-class level being 138 per cent of that is official), the fifth class rate in official territory would be increased from 35 cents to 40 cents, while the fifth class rate in southern territory would be reduced from 62 cents to 55 cents. Similarly, if uniformity of such class ratings should be achieved by increasing the official territory basis from 27½ per cent to 34 per cent, and reducing the basis in southern territory from 40 per cent to 34 per cent, the latter figure being about halfway between the existing percentages in the two territories, the sixth class rate in official territory would be increased from 27½ cents to 34 cents, while the sixth class rate in southern territory would be reduced from 55 cents to 47 cents.

The accomplishment of classification uniformity in such a manner would be a serious matter for shippers in official territory and for the northern states and communities because of the very large volume of traffic that moves on these class rates.

As we argued in Part I, Point IX, the record contains no evidence which would sustain an order requiring such an increase in the levels of transportation charges in official territory. Certainly, before a classification change producing such results should be passed upon by the Commission, the Commission should have before it testimony from the shippers who would be affected thereby.

What has been said has had reference only to the problems of accomplishing uniformity in the classification ratings and in the relationships of the various classes to first-class. It does not take into account the even more drastic changes upward or downward or both which would be involved in achieving not only uniformity of percentage relationships but also a uniform basis of the class rates themselves. How many and considerable the changes would be in this double operation are shown by Mr. Bell's Exhibit 168. There is no evidence as to how shippers of particular commodities would be affected thereby.

Therefore, we are compelled to submit that however appealing the idea of a uniform classification may be, the Commission cannot by order prescribe one on the present state of the record in this proceeding. As a matter of fact, it may be questioned whether under the Act the general revision of classifications is not the function of railroad management and whether if the Commission should undertake to prescribe a uniform classification it would not be improperly invading the realm of management.

POINT II

Some simplification of the classification is possible without actually changing relationships or the substance of the ratings.

Bell's analysis, Exhibit 167, indicates that there is really a somewhat greater degree of uniformity among the classifications or rather in the rates which the classifications produce than is apparent on the surface. This is due to the fact that ratings which produce the same result, so far as the rate levels are concerned are sometimes called by different names in the different classifications and even in the same classifications. For example, in the official classification, Rule 26 is 55 per cent of first-class, while in the southern and western classifications 55 per cent of first-class is represented by fourth class. So far as the application of actual rates is concerned, therefore, page 28 of the exhibit shows that in the case of carload ratings there is actual uniformity between articles which are rated Rule 26 in official and fourth class in southern and western, which accounts for 1,138 carload ratings. Further than this, however, there are even in official territory a number of articles which are given Column 55 ratings, which produce the same rates in official territory as Rule 26 ratings. Similarly, in official and western territories there are a number of articles which are given Column 55 ratings instead of fourth class. Therefore, if all articles are given the same carload ratings which take the same percentages of first-class in all three territories, regardless of what the ratings are called, there

would be both apparent and actual uniformity in the case of 1708 carload and 565 less carload ratings, where at the present time there are apparent but not actual differences (Ex. 167, pp. 28, 29). Such a course would at once reduce by a substantial number the variations which appear to exist between the several classifications.

Conclusion as to Part Two

For the reasons which have been discussed and because of the complete lack of evidence in the record bearing upon classification matters, it is submitted that the Commission may not in this proceeding find the present classifications unlawful, prescribe a new and revised uniform classification for application throughout the United States, or order the numerous changes in the classifications which would be necessary in order to accomplish uniformity.

There is, of course, nothing to prevent the Commission from having its staff prepare a tentative uniform classification indicating what present ratings and rates would be changed thereby and then conducting hearings at which shippers and carriers affected by the changes in ratings and the changes in freight rates produced thereby could be heard in opposition or agreement, to the end that a uniform classification might, if possible, ultimately be thus evolved. Such a classification could then either be adopted voluntarily by the carriers or could be made the basis for consideration and determination as to whether the existing classifications and

classification ratings are unlawful to the extent they might differ therefrom.

August 9, 1943.

Respectfully submitted,

THE STATE OF NEW YORK,
by NATHANIEL L. GOLDSTEIN,
Attorney General,
Albany, N. Y.;
PARKER MCCOLLESTER,
FRANK J. CLARK,
Special Assistant Attorneys General,
25 Broadway,
New York City.

THE STATE OF NEW JERSEY,
by DAVID T. WILENTZ,
Attorney General,
State House, Trenton, N. J.;
ROBERT PEACOCK,
Assistant Attorney General,
State House, Trenton, N. J.;
CHARLES V. HANLON,
140 Cedar Street,
New York 18, N. Y.

THE COMMONWEALTH OF PENNSYLVANIA,
by E. A. DELANEY,
Deputy Attorney General;
JAMES H. DUFF,
Attorney General,
Harrisburg, Pa.

THE STATE OF MARYLAND,
by WILLIAM C. WALSH,
Attorney General,
Baltimore, Md.

THE CHAMBER OF COMMERCE OF THE STATE OF NEW YORK,
by PARKER MCCOLLESTER, *its Attorney,*
25 Broadway,
New York City.

PENNSYLVANIA STATE CHAMBER OF COMMERCE,
by WARREN C. BULETTE, *President*
State Chamber Building,
Harrisburg, Pa.;
CHARLES DONLEY, *Practitioner,*
Dravo Building,
Pittsburgh, Pa.

CHAMBER OF COMMERCE, DELAWARE,
by P. F. GUERKE, *Traffic Manager,*
DuPont Building,
Wilmington, Del.

NEW JERSEY INDUSTRIAL TRAFFIC LEAGUE,
by GEORGE E. MARTIN, *Secretary,*
P. O. Box 601,
Newark, N. J.

ASSOCIATED INDUSTRIES OF NEW YORK STATE, INCORPORATED,
by JAMES J. HAILEY,
Chairman, Transportation Council,
Buffalo, N. Y.

Baltimore Association of Commerce,
by Chas. R. Seal, *Traffic Director,*
22 Light Street,
Baltimore, Md.

Brooklyn Chamber of Commerce,
by William Graf, *Acting Traffic Manager,*
26 Court Street,
Brooklyn, N. Y.

Buffalo Chamber of Commerce,
by E. A. Momberger,
Manager, Transportation Department,
Chamber of Commerce Building,
Buffalo, N. Y.

Chamber of Commerce of the City of Newark, N. J.,
by Kenneth S. Carberry,
Manager, Commerce and Trade Bureau,
20 Branford Place,
Newark, N. J.

Commerce and Industry Association of New York, Inc.,
by G. E. Mace,
Manager, Commerce and Trade Bureau,
233 Broadway,
New York, N. Y.

Chamber of Commerce and Board of Trade of Philadelphia,
by Samuel H. Williams,
Director, Transportation Bureau,
Twelfth and Walnut Streets,
Philadelphia, Pa.

Rochester Chamber of Commerce,
by Frederick W. Burton,
Manager, Transportation Bureau,
55 St. Paul Street,
Rochester, N. Y.

The Syracuse Chamber of Commerce,
by Frederick E. Norton, *Secretary,*
351 South Warren Street,
Syracuse, N. Y.

Utica Chamber of Commerce,
by Michael J. O'Mahoney,
Manager, Traffic Department,
8 Elizabeth Street,
Utica, N. Y.

Certificate of Service.

I hereby certify that I have this day served the foregoing document upon all parties in this proceeding listed in the Commission's notices regarding service of briefs by mailing by first-class mail a copy thereof properly addressed to each such party at the address indicated on the notice.

Dated at New York, N. Y., this 10th day of August, 1943.

Parker McCollester,
Of Counsel for the parties on whose behalf this brief is filed.

LAWYERS PRESS, INC., 165 William St., N. Y. C.; 'Phone: BEekman 3-2300

COLUMBIA UNIVERSITY LIBRARIES

This book is due on the date indicated below, or at the expiration of a definite period after the date of borrowing, as provided by the library rules or by special arrangement with the Librarian in charge.

DATE BORROWED	DATE DUE	DATE BORROWED	DATE DUE
	JAN 29 '59		
C28(10-53)100M			

COLUMBIA UNIVERSITY LIBRARIES
0041407849

D530.7 Un34847

D530.7 Un34847

U.S. Interstate Commerce Commissio:

Before the I.C.C., docket nos. 28300 and28310.

JAN 26 '59 L. Soorkian

FEB 8 '58 Recen 2.10.58

FEB 26 '58

MSH 01798

NEH MAY 16 1994

BOUND

NOV 5 - 1954

END OF
TITLE